



TES

TOTAL
ENTERPRISE
SOLUTIONS

MASTER SERVICES AGREEMENT

Document Ref.
Version

MSA
v 5.0

Definitions

Affiliate means any person, partnership, joint venture, corporation, subsidiary, or other form of enterprise, domestic or foreign, directly or indirectly controlling, controlled by or under common control with the Customer or TES.

Agreement This MSA together with the Schedules and any Project Documents.

Commencement Date The date of signature of the first SOF agreed in accordance with this MSA.

Commencement Fees Any fees payable by the Customer prior to any Services (or applicable Services) being undertaken, as detailed in a SOF.

Customer Data the data inputted by the Customer, or TES on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer Equipment any computer hardware and equipment owned by the Customer and/or to be acquired and supplied by the Customer relating to the Services in accordance with Schedule 1 and where applicable integrated in accordance with Schedule 2.

Customised Software software code changes and additions to Software specifically developed or modified or written by TES pursuant to a SOF.

Equipment any third-party computer hardware and equipment to be supplied by TES to the Customer as detailed in an SOF in accordance with Schedule 2.

Fees the fees expressly set out in the SOF payable by the Customer for the provision of the Services by TES.

Go-Live Date the date on which the Software and Equipment are used by the Customer in a live environment after successful User Acceptance Testing in accordance with Schedule 1, Annex 1, Par. 2.

Intellectual Property Rights all intellectual and industrial property rights including copyright, patents, know-how, registered trademarks, registered designs, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, database rights, and any other rights in any invention, discovery or process.

Location(s) an address of the Customer at which Equipment or Software is to be installed as detailed in an SOF or other Project Documents.

MSA this master services agreement.

PID the project initiation document issued by TES and signed by the Parties, replicating the description of the Services to be provided contained in the SOF and detailing the agreed success criteria.

Project Documents any SOF, together with the PID and Project Plan that both describe the Services being provided by TES under that SOF, and any other document referred to in that SOF.

Project Plan any project and/or implementation plan detailing the timetable, development stages and delivery dates for Services as attached to or set out in the PID as agreed by the Parties, and amended by agreement between the Parties, in accordance with Clause 3 from time to time.

Schedules the service schedules attached to the MSA at Schedule 1 (Professional Services), Schedule 2 (Hardware and Software) and Schedule 3 (Support Services).

Services the services, including Professional Services (as defined in Schedule 1), Development Services (as defined in Schedule 1), Support Services (as defined in Schedule 3), and where applicable the provision of any Equipment and/or Software, by TES to the Customer, under this Agreement, as set out in a SOF and further described in any Project Documents referred to in the SOF.

SOF a sales order form issued by TES and signed by the Parties setting out the Services purchased by the Customer from TES, including where applicable any Equipment and/or Software, the Fees payable for such Services, the terms for which each of the Services and Software will be provided, and the Schedules applicable to each of the Services.

Software TES Software, and/or any Third-Party Software, and/or any Customised Software as specified in a SOF.

TES Software standard software components or modules of the Software that are owned by TES and supplied to the Customer under this Agreement as detailed in an SOF and in accordance with Schedule 1.

Third Party Software third party software supplied to the Customer by TES and specified in an SOF.

In this Agreement: reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted; words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate and (in each case) vice versa; any reference to a Party to this Agreement includes a reference to its successors in title and permitted assigns; clause, schedule and paragraph headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement. Any words following the terms including, include, in particular, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

In the event of a conflict between this MSA, a Sales Order Form, or Schedules, the following order of precedence shall prevail: 1) the SOF, including any other Project Document attached to it; 2) Schedules; 3) MSA.

1. Scope of Services

- 1.1. This Agreement operates as a framework agreement which defines the contractual terms and conditions under which TES will supply **Services** to the **Customer**.
- 1.2. Whilst this Agreement remains in force the Parties shall agree the provision of Services as detailed in Clause 3.
- 1.3. The Customer acknowledges that no work will begin on any Services unless any applicable Commencement Fees have been paid and applicable Project Documents have been signed (or in the case of the Project Plan agreed in accordance with Clause 3).
- 1.4. Subject to the payment of any applicable Fees TES shall provide to the Customer:
- 1.5. **Hardware and Software Services:** comprising Equipment and Software as set out in the SOF and Schedule 2.
- 1.6. **Professional Services:** the specific services listed in the SOF and further described in the PID which may include all or some of the following: integration services, migration services, consultancy services, project management, development services and training services, all governed by Schedule 1.
- 1.7. **Support Services:** the, Support Services listed in the SOF and governed by Schedule 3.
- 1.8. **Additional Services:** TES will carry out any Additional Services, as may be agreed in writing between the Parties from time to time in a separate SOF and any additional accompanying Project Documents. Unless

otherwise detailed in a SOF, TES will send the Customer an invoice for any agreed Additional Services either as soon as they have been provided or at the end of the month in which they were provided.

2. Performance of Services

TES shall, subject to and in accordance with this Agreement and any applicable Project Documents:

- 2.1. perform the Services in accordance with the Project Documents with all reasonable skill and care and in a timely, reliable and professional manner using employees with appropriate skills, qualifications, training and experience.
- 2.2. provide the Software under the terms of this Agreement and deliver and install (where applicable) the Software and Equipment at the Locations in accordance with the specifications and requirements set out in the Project Documents and by their agreed delivery dates (as applicable to that item) in the Project Plan;
- 2.3. provide the Third-Party Software under the standard licence terms provided by the relevant third party right holders, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third Parties by such licence terms and to ensure that its Affiliates are bound under similar obligations owed to the relevant third Parties;
- 2.4. integrate and configure the Software and Equipment and provide migration services where agreed;
- 2.5. carry out, in conjunction with the Customer, all the agreed tests needed in order for the Customer to be reasonably satisfied the Software, Equipment and Services meet the Customer's requirements as set out in the Project Documents and as agreed in accordance with Schedule 2; and,
- 2.6. use reasonable endeavours to provide the Software, Equipment and Services as ready for use by the Customer by the agreed completion dates as set out in the PID.

3. Agreeing Services and Project Documents

- 3.1 **First Service Order Form.** This MSA will come into effect on the date of the first SOF agreed in accordance with its terms (the **Commencement Date**). The SOF will contain a line item description of the Software and Services being provided together with a detailed description of in-scope Software and Services in the accompanying appendix. The PID and Project Plan will not be signed on the Commencement Date but will be agreed in accordance with Clause 3.6.
- 3.2 **Further Service Order Forms.** The Parties shall agree the scope of any future work and provision of further or additional Software, Equipment and Services and detail them in a SOF which shall be governed by and be subject to, the terms and conditions of this Agreement.
- 3.3 **TES due diligence phase.** During the period before the PID is agreed and signed, TES shall: (a) carry out reasonable due diligence in relation to the Customer's business requirements and ask the Customer questions it considers to be relevant for the purpose of providing the Services; and (b) carry out its own reasonable enquiries as to the accuracy and adequacy of any information supplied to TES by the Customer.
- 3.4 **Customer co-operation.** The Customer acknowledges that:

(a) TES is reliant on the Customer co-operating with its due diligence process and providing complete and accurate information, together with any required data in an ordered and useable format, to the best of the Customer's knowledge and ability, in responding to TES' questions, and that the due diligence TES carries out and questions asked of the Customer, as well as the SOF and other Project Documents prepared and agreed will all be based upon this information.

(b) TES is reliant on the Customer being able to provide it with, or provide it with access to, all assets (including documentation, content, code, software, intellectual property rights, and any other physical or digital materials) that TES reasonably considers necessary in order for TES to fully carry out the due diligence process, and subsequently to perform the Services. In particular, where the Services will involve the migration of data, TES is reliant on that data being in a reasonably ordered and usable format in order to be able to effectively provide the Services as agreed. TES will notify the Customer as early as possible where it believes data is not in such a state and inform the Customer of any changes required to timescales and consequently the Fees payable in respect of Services being provided as a result.

3.5 **Incomplete or incorrect information.** The Customer acknowledges that the Services may not be able to be performed adequately or meet the Customer's requirements where information provided by the Customer to TES is incomplete, incorrect, or misleading.

3.6 **Kick-off meeting.** Following the signature of the applicable SOF, the Parties will meet either in person or via conference call for a "kick-off meeting", following which the Parties shall agree the PID and any other Project Documents. Once agreed, the PID shall be signed. The Customer acknowledges that it is not possible for the PID and/or Project Plan to be agreed and signed before TES has the information it requires from the due diligence process carried out in accordance with this Clause 3.

3.7 **Agreeing Project Documents.** The Parties acknowledge that the PID and the Project Plan may be subject to change throughout the course of the Agreement. Where either party suggests an amendment to the PID or the Project Plan, the parties will discuss the amendment in good faith and where the amendment is agreed, the parties will confirm their agreement: (a) to amend the Project Plan by email, following which the Project Plan will be deemed amended accordingly; and (b) to amend the PID by signing the amended PID, following which the PID will be deemed amended accordingly.

3.8 **Commencement Fees.** The Customer acknowledges that no work will begin on any Services unless all applicable Commencement Fees have been paid and applicable Project Documents have been signed off in writing by both Parties. Any work which is not specifically detailed in a Project Document is out of scope and subject to additional charges.

4. Delivery Dates for Services

4.1 **Delivery Dates.** TES shall meet the delivery dates specified in any Project Document or applicable Schedule, but unless otherwise agreed in writing, any such dates shall be estimates only and time shall not

be of the essence (provided always that TES shall use all reasonable endeavours to complete delivery as soon as reasonably possible thereafter).

- 4.2. **Extensions of time to any delivery dates for the provision of Services.** TES shall be given an extension of the timetable of any one or more of the stages in any Project Document or for any other Services if one of more of the following events occurs: (a) a variation to Services is made at the Customer's request or a request is made for something out of scope; (b) a force majeure event occurs as described in this Agreement; (c) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or any third party acting for or on behalf of the Customer.
- 4.3. If TES is entitled to an extension of time under Clause 4.2, it shall give written notice to the Customer as soon as becoming aware of the fact that the event will cause a delay. Such notice shall specify the event relied on and the probable extent of the delay associated with it.
- 4.4. The Parties shall use best endeavours to agree in writing, signed by both Parties, what extension of time is reasonable in the circumstances. Any SOF or PID or any applicable timetable shall be amended accordingly.
- 4.5. If TES's performance of its obligations under this Agreement is hindered, prevented or delayed by any act or omission of the Customer, the Customer's agents, sub-contractors or employees, TES shall notify the Customer of the delay as soon as possible, providing the Customer with all available details of any costs, charges or losses sustained or incurred by TES as a result of the act or omission in question. TES will use its reasonable endeavours to mitigate such costs, charges and losses. TES will be entitled to invoice the Customer for all reasonable and demonstrable costs, charges or losses sustained or incurred by TES, subject to TES having confirmed such costs, charges and losses to the Customer in writing. If TES can demonstrate that the delay has resulted in an increase in cost to TES of carrying out its obligations under this Agreement, TES may increase any applicable Fees by an amount which will not under any circumstances exceed any such demonstrable cost and shall in any case be subject to the limitation of liability under Clause 14.
- 4.6. **User Acceptance Tests.** Where applicable the Parties shall agree User Acceptance Tests (as defined in Schedule 2) for the Software and Equipment as detailed in Schedule 2.

5. Changes to the Services

- 5.1. **Change Requests.** If either party requests a change to the scope or execution of the Services, TES shall, within a reasonable time, provide a written estimate to the Customer of: (a) the likely time required to implement the change; (b) any variations to TES's Fees arising from the change; (c) the likely effect of the change on any Project Documents; and (d) any other impact of the change on the terms of this Agreement.
- 5.2. **Service Delivery and Improvements.** The Customer acknowledges that TES will make improvements to the Services and service provision from time to time during the term of this Agreement.
- 5.3. **Third Party Changes.** The Customer also acknowledges that any Third Party Software provider

may make changes to their terms and conditions from time to time, provided that where any such changes substantially adversely affect the Customer's receipt of the Equipment, Software or any of the Services, TES will: (a) give the Customer reasonable notice of not less than 30 days of such change prior to it being implemented; (b) promptly provide the Customer details of any Third Party Software provider change as soon as TES has been notified in writing by such third party and the effects that this will have upon the Software and Services purchased by the Customer, and following receipt of this notice Customer will have until the date the change is to come into effect to indicate its wish to TES to terminate its licence for that Third Party Software, such termination to take effect at the earliest possible opportunity in accordance with Schedule 2, in whole or in part with no liability for any further payments not outstanding on the date of termination.

- 5.4. **Compliance with Law or Regulation.** The Customer acknowledges that TES may from time to time change the Services in order to comply with any applicable law and regulation. In such circumstances, TES will notify the Customer as soon as it becomes aware of the need to make the change, providing all such details as are available to it regarding the change, and will work with the Customer and use all reasonable endeavours to ensure that the Services continue to meet the requirements agreed between the Parties. Provided TES gives the Customer at least 30 days' prior written notice, TES reserves the right to increase any applicable Fees only so far as is necessary to reflect any reasonable, demonstrable, and direct costs it has incurred as a result of any change in applicable law or regulation. Following receipt of such notice the Customer may terminate the Agreement in whole or in part with no liability for any further payments not outstanding on the date of termination.

6. Project Personnel

- 6.1. **Appointing a Project Lead.** Both Parties shall appoint suitably qualified, competent and trained individuals (and provide details of those individuals to the other Party), who shall have the responsibility and commensurate authority for the overall progress of the Services and to whom all questions regarding this Agreement can be referred (Project Leads).
- 6.2. Both Party's Project Leads shall co-operate with the other and shall attend meetings agreed at reasonable intervals or as otherwise specified in applicable Project Documentation.
- 6.3. **Ensuring continuity of Project Teams.** Both Parties agree to take reasonable steps to maintain continuity in relation to their project team for any Equipment, Software and Services and that any key individuals (named in any SOF) shall not be replaced without notice to the other, unless: (a) the individual to be replaced is prevented by ill health from carrying out his duties in connection with the agreement for a significant period; (b) the individual resigns with immediate effect from employment with that Party; (c) the contract of employment of the individual is terminated for whatever reason; or (d) either Party makes a reasonable, written request to the other to replace the individual (e.g. because they have performed unsatisfactorily or have caused a breach of

any of the other Party's obligations under this Agreement).

- 6.4. If any such person is replaced, each Party shall consult with the other about the identity of a suitable replacement. The Parties shall meet as soon as practicable to discuss its implications and to negotiate in good faith with a view to agreeing such changes as are reasonably required to this Agreement or any Project Document.

7. Customer Obligations

- 7.1. The Customer shall: comply with its obligations as set out in the Project Documents and provide TES with timely co-operation in relation to this Agreement; and access to such information as may be required by TES in order to render the Services, including but not limited to, Customer personnel, premises and other facilities, security access information and configuration services and Customer Data and documentation requested for the provision of the Services (and use reasonable endeavours to ensure that such information and data is accurate in all material respects) and afford to the authorised personnel of TES during normal working hours, or as otherwise agreed, access to any relevant Location and shall provide adequate free working space and such other facilities at such Location as may be reasonably requested by TES for the delivery, installation, implementation and, if applicable, testing of the Services or to provide the Services. The Customer shall comply with its obligations under applicable health and safety regulations with respect to the provision of such access and facilities to TES. TES will take all practical steps to ensure that its personnel will, whenever on Customer's premises, obey all reasonable security and health and safety standards, procedures and directions notified to it by Customer. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, TES may adjust any agreed timetable or delivery schedule as reasonably necessary.
- 7.2. The Customer acknowledges that TES's ability to provide the Services is dependent upon the Customer's full and timely co-operation as well as the accuracy and completeness of materials and any information and data the Customer provides. TES is not responsible for any loss suffered by the Customer to the extent that such loss is caused by the Customer not providing it with this such access, cooperation and information.
- 7.3. **Customer Materials.** The Customer shall ensure that the customer content does not infringe any applicable laws, regulations or third party rights (including any third party Intellectual Property Rights). The Customer is solely responsible for ensuring that its use of the Services comply with any legal or regulatory requirements in all countries and for all purposes for which use is intended.
- 7.4. The Customer shall:
- (a) subject to any training having been provided by TES, be solely responsible for ensuring that all users of the Services are trained in the use of the same. TES shall have no responsibility to provide Support Services to the extent that support issues are deemed by TES to be the result of misuse or lack of appropriate training by the Customer in the use of Services;

be responsible for the provision of and ongoing payment of any and all fees specified in a SOF for the provision of third party services required for the use of the Services;

obtain and shall maintain all necessary licences, consents, and permissions necessary for Customer's use of its own systems and for allowing TES, its contractors and agents to access such systems in order to and to the extent needed for them to perform their obligations under this Agreement, including without limitation the Services;

be responsible for procuring any third party co-operation reasonably required for the receipt of Services and hold current up-to-date maintenance, support or active subscription agreements in place with all aspects of the Customer's IT infrastructure and systems to allow TES to seek and receive technical assistance when necessary in respect to the Support Services. In the event that there is no such third party support agreement in place, TES shall have no obligation to provide the Support Services and may at its sole option provide reasonable assistance to the Customer in resolving any issue or may suspend Services. For the avoidance of doubt, unless otherwise provided in writing in an SOF the Customer shall be responsible for the provision of and ongoing payment of any and all fees for the provision of third party services required for the use of the Services;

be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;

be responsible for the upgrade of any part of the Customer's IT infrastructure as may be required to continue to meet any the minimum specification detailed in any Project Document (as amended from time to time) to continue to use the Services. Neither TES nor its suppliers shall be liable for any degradation or disruption to the Services in the event the Customer does not make the required upgrade;

ensure appropriate security precautions are taken in connection with its use of the Services. The Customer is responsible for taking all reasonable steps to mitigate the risks inherent in the provision and receipt of the Services, including data loss and taking all reasonable and usual precautions to safeguard the Customer technology infrastructure, including operating firewalls and virus checks and implementing effective and appropriate data security in respect to the receipt of Services.

consult with TES before making any changes to the Customer's IT infrastructure.

- 7.5. **Site Preparation.** If applicable under this Agreement, upon request by the Customer TES shall supply to the Customer in reasonable time before delivery of any Services such information as TES has available to it to enable the Customer to prepare the relevant Location for the receipt of Services and to provide proper and safe environmental and operational conditions for the efficient working and maintenance thereof. The Customer shall at its own expense prepare the Location and provide such proper and safe environmental and operational conditions in line with all

relevant health and safety laws and regulations as are reasonably required for TES to provide the Services prior to delivery. TES shall not be obliged to send any of its staff to the Location where the Customer has not prepared the Location in line with these requirements.

- 7.6. The Customer shall be responsible for ensuring that any relevant Customer Equipment is installed and operational at a Location before any date specified in a Project Document for the provision of Services at such Location and be responsible for procuring any third party co-operation reasonably required for the receipt of Services any time.

8. Price and Payment

- 8.1. **Payment Terms and Invoicing.** The Fees for Services shall be paid by the Customer in accordance with the payment terms set out in the applicable SOF or Project Document. Invoices and payments shall be in Sterling unless otherwise detailed in an SOF. Except for any payment due upon execution of this Agreement, Commencement Fee or as otherwise set out in an SOF, all payments shall be made: (a) on or before the dates detailed in any applicable SOF; or (b) where no such dates are set out, by the Customer within thirty (30) days of the date of receipt by the Customer of an invoice under this Clause 8.

- 8.2. All Fees are stated exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.

- 8.3. The Customer acknowledges that unless otherwise agreed between the parties the first payment of any recurring Fees as detailed in a SOF shall become immediately payable on the Go-Live Date whether the Customer is making full use of the Services or not. Following the Go-Live Date, any Services may be suspended by TES at any time until all outstanding Fees, and recurring Fees then due, have been paid.

- 8.4. **Form of Invoices.** All invoices submitted by TES shall include TES's invoice reference number and date, the billing period, any reimbursable expenses incurred broken down by type, a description of the fee being charged and its calculation, and where relevant, a brief narrative of the billable task(s) undertaken in connection with the delivery of Services.

- 8.5. The Price and fees for Services are exclusive of Value Added Tax or other Government imposed excises or taxes (if any) which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

- 8.6. **Non-payment of Invoices.** If the Customer does not pay any undisputed amount properly due to TES under or in connection with the Agreement, TES may: (a) submit a written request that the Customer pay such amount; (b) charge the Customer interest on the overdue amount at the rate of 5% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily and be compounded quarterly); and/or (c) where the Customer has still failed to pay any undisputed amount 7 days after TES' written request, withhold performance of the Services until all payment of overdue sums has been made; and/or (d) where the Customer has still failed to pay any undisputed amount 14 days after TES' written request, terminate this Agreement. For the avoidance of doubt, if any invoice is not paid 14 days after TES's written request then TES shall be under no obligation to

provide Services, renew or pay third party costs or fees associated with this Agreement or any Services unless and until the relevant invoice is paid in full. Any additional charges payable as a result of the non-payment of third-party related fees (within the time requested by TES) shall be passed on directly to the Customer.

- 8.7. **Invoice Disputes.** In the event that the Customer in good faith disputes an invoice submitted by TES, the Customer may withhold payment of any amount subject to the dispute; provided, however, that (a) the Customer will continue to pay all undisputed amounts in accordance with the terms hereof, and (b) the Customer will notify TES, in writing, of any disputed amounts and the reason for any dispute by the due date for payment of the invoice containing any disputed charges. In the event of a dispute regarding the amount of any invoice, the Parties will use all reasonable efforts to resolve such dispute within 30 days after the Customer provides written notification of such dispute to TES. Each Party will provide full supporting documentation concerning any disputed amount or invoice within 30 days after written notification of the dispute. Unpaid fees that are under good faith dispute will not be considered a basis for default hereunder. To the extent that a dispute regarding the amount of any invoice cannot be resolved pursuant to this Clause 8.7, the dispute resolution procedures set forth in Clause 17 will apply.

- 8.8. **Payment Terms – Fixed Price / T&M / Budget.**

The Customer shall pay all Fees to TES under this Agreement in accordance with this Clause 8, subject to any other payment terms detailed in a SOF or as otherwise agreed in writing between the parties. Unless otherwise detailed in a SOF invoices for Software and services shall be raised accordingly:

- (a) **Work completed on a Time-and-Materials basis.**

For elements of work indicated in an SOF to be conducted on a Time & Materials basis TES shall be entitled to charge the Customer for the number of days detailed as being required in order to complete the provision of the Services indicated in the applicable SOF, or Project Documentation. Where Time and Materials work applies TES shall charge for TES's personnel providing the Services at the rates set out in the applicable SOF or Project Document and:

- (i) the Fees payable shall be calculated in accordance with TES's standard daily fee rates as set out in or attached to the SOF;

- (ii) TES's standard day rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.30 pm on weekdays (excluding weekends and public holidays). For the avoidance of doubt, unless otherwise agreed between the Parties, any hours worked in excess of 3.75 hours shall constitute a full day's work and be charged at the applicable day rate, work up to 3.75 hours shall be charged at ½ the applicable day rate then in force. TES may, at its discretion, waive fees for certain work completed in under 1 ½ hours, provided that even in the event of such a waiver, where such waived time over a 3 month period cumulatively totals more than 3.75 hours, TES may make an appropriate charge for such works at its then applicable day rates;

- (iii) TES shall be entitled to charge at an overtime rate in respect to time and a half, and double time for time

- worked outside of the hours referred to in condition (ii) above on a pro-rata basis, as detailed in a SOF;
- (iv) TES shall use such time sheets to calculate the Fees covered by each monthly invoice;
 - (v) TES shall invoice the Customer monthly in arrears for its Fees for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Clause 8. If requested by the Customer each invoice shall set out the time spent by each member of the TES team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts; and
 - (vi) the Customer acknowledges and agrees that the number of days detailed as being required to complete an element of work presented in any SOF or other Project Document represent the best estimates of TES and not a contractual commitment.
- (b) **Budget.** Where a budget has been agreed as set out in a SOF the Fees are based in whole or part upon the time spent by the TES performing the Services, TES must obtain the Customer's written consent before performing Services that result in any estimate of budget agreed by the parties being exceeded. For the avoidance of doubt, any budget detailed in any Project Documentation is an estimate and whilst TES shall use all reasonable endeavours to estimate a budget for any Services, TES gives no warranty that the Customer's business requirements in respect to any Services will be entirely met within any agreed budget.
- (c) **Where work is provided for a Fixed Price.**
- (i) The Customer will pay the Fees to TES in full without any set off: (1) on or before the dates set out in the relevant Project Document; or (2) where no such dates are set out in the relevant Project Document, within 30 days of the date of issue of an invoice and TES shall invoice the Customer for the Fees that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided below.
 - (ii) Any fixed price contained in the SOF excludes: (1) unless otherwise agreed in a SOF, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the TES team in connection with completing the work, and the cost of any materials or services reasonably and properly provided by third parties required by TES to complete the work. Such expenses, materials and third party services shall be invoiced by TES at cost; and, (2) VAT, which TES shall add to its invoices at the appropriate rate.
- 8.9. **Expenses.** The Customer shall reimburse TES for any reasonable expenses necessarily incurred by TES in connection with the provision of the Services as detailed in a SOF.
- 8.10. **Technical Service Costs.** Where TES incur third party costs for any services provided to the Customer or otherwise in the performance of the Services, such third party services shall be invoiced by TES and added to its invoices at the appropriate rate. All Technical Service Costs shall be payable in advance at pre-agreed periods.
- 8.11. **Third Party Charges.** Unless otherwise detailed in this Agreement, if an Equipment manufacturer's or Third Party Software vendor's delivery list price for any item of Software or Equipment is lower or higher at the date on which TES reasonably needs to acquire the same

for the purposes of this Agreement than it is at the date of any applicable SOF, the part of the Fees relating to that item shall be reduced or increased, as the case may be, to reflect that decrease or increase in the manufacturer's or vendor's list price.

9. Warranties

- 9.1. TES warrants and represents that: (a) it will perform the Services in a timely, reliable and professional manner, in conformity with good industry practice by a sufficient number of competent staff with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements; (b) has full capacity and authority and all necessary consents to enter into and to perform this Agreement; (c) TES shall deliver any Equipment to the Customer free from all encumbrances; (d) the TES Software is proprietary to TES (except where otherwise stated) and that, as far as it is aware, it has the right to license all UK Intellectual Property Rights in and to the TES Software to the Customer and to provide the Support Services to the Customer.
- 9.2. TES specifically denies any implied or express representation: (a) that the Services will be fit for any purpose or use other than that specifically stated by TES in writing; or (b) that it will be able to rectify all defects, provided that it shall use all reasonable endeavours to rectify such defects in accordance with Schedule 3. The Customer acknowledges that non-material defects in the Services shall not constitute a material breach of this Agreement or prevent acceptance of the Equipment, Software or Services.
- 9.3. TES: (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; and (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and, (c) shall not be obliged to rectify or be liable in any way for, and any unauthorised modifications, alteration, use, repair or maintenance of the Services by any other person other than a representative of TES shall not be liable for non-compliance with any warranties, or for failure in performing any obligations, to the extent such non-compliance or failure is caused by such unauthorised modifications, alteration, use, repair or maintenance.
- 9.4. The warranties, representations (and where applicable, warranties) set out in this Clause 9 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement.

10. Intellectual Property Rights

- 10.1. The Customer acknowledges and agrees that TES and/or its licensors own all intellectual property rights in the Services and otherwise arising out of or connected with this Agreement. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or

any other intellectual property rights or licence save as may be specifically granted to the Customer in accordance this Agreement and Schedule 1.

- 10.2. **Software Licenses.** Third Party Software is supplied in accordance with paragraph 3 of Schedule 2, TES Software is supplied and licensed in accordance with paragraph 15 of Schedule 2, and Customised Software is supplied and licensed in accordance with paragraph 16 of Schedule 2.
- 10.3. **Customer Materials.** The Customer warrants that all Intellectual Property Rights in the Materials are the Customer's property or that the Customer has a license to use the same for the purpose of their incorporation and use as part of the Services.
- 10.4. **Intellectual Property Indemnity.** Each Party agrees to indemnify the other against all liabilities, costs, expenses, damages and losses suffered or incurred by the other party arising out of any third party claim for infringement of any third party Intellectual Property Rights by the indemnifying party.

11. Confidentiality & Publicity

- 11.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that: (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the other party's lawful possession before the disclosure; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party, which development can be shown by written evidence; (e) is required to be disclosed by law, any court of competent jurisdiction or any regulatory or administrative body.
- 11.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party but this shall not apply to either party's subcontractors, agents or licensees.
- 11.5. Details of the Services, and the results of any performance, security, penetration, vulnerability or other logical, analytical, data or information gathering tests carried out on the Services, constitute Confidential Information.
- 11.6. TES acknowledges that the Customer Data is Confidential Information belonging to the Customer.
- 11.7. The Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party will have executed or shall execute appropriate written agreements with third Parties sufficient to enable Receiving Party to enforce all the provisions of this Clause 11.

11.8. The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Clause 11 by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure

11.9. Upon termination of this Agreement for any reason, Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same

11.10. **Remedies.** The Parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief.

11.11. The terms of confidentiality under this Agreement shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products without use of the other Party's Confidential Information.

11.12. **Suggestions.** The Customer may from time to time provide suggestions, comments or other feedback ("Suggestions") to TES with respect to Confidential Information provided originally by TES. Both Parties agree that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by the Customer, shall not, absent a separate written agreement, create any confidentiality obligation for TES. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the Parties, TES shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

11.13. **Publicity.** The Customer permit TES to publish the Customer as a Customer of TES for marketing purposes and to use the Customer's then current trade mark logos and name on the TES web site. TES may from time to time collaborate with the Customer to produce and publish Customer comments, endorsements, case studies and other instances of advocacy, for the purposes of marketing, which the Customer shall have the right to amend and approve before publication..

12. Customer Data and Data Protection

12.1. **Customer content and data.** All materials or content provided by the Customer for incorporation into the Services shall be owned by the Customer (but ownership shall not extend to any of TES's Intellectual Property Rights). The Customer warrants that all Intellectual Property Rights in such content and data are the Customer's property or that the Customer has a license to use the same for the purpose of their incorporation and use as part of the Services. The Customer grants TES the non-exclusive right to use

such items strictly as required for the limited purpose of performing its obligations under this Agreement. The Customer shall own all rights, title and interest in and to all of the Customer Data.

- 12.2. TES shall not be responsible or liable for any loss, destruction, alteration or disclosure of Customer Data or Materials caused by any third party other than its employees, agents, subcontractors or any other parties acting under its authority.
- 12.3. **Compliance with Data Protection Act / GDPR.** If TES processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Parties record their intention that the Customer shall be the data controller and TES shall be a data processor and in any such case the Parties shall comply with the attached Data Processing Addendum.

13. Term and Termination

- 13.1. This Agreement shall commence on the Commencement Date and shall continue until expiry of all Sales Order Forms placed hereunder unless terminated in accordance with the terms of this Agreement.
- 13.2. **Provision of ad hoc / one-off Services.** The provision of ad hoc services detailed in a SOF shall commence on the dates specified in that SOF and shall continue in accordance with any agreed terms and applicable Schedules until the completion of that work.
- 13.3. **Termination.** Either Party may terminate this Agreement or any SOF forthwith by written notice to the other if:
- (a) the other Party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other Party shall become subject to an administration order (or have an administrator appointed) or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business
 - (b) the other Party commits any material breach of any provision of this Agreement or the SOF which is capable of remedy if the other Party fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
 - (c) the other Party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
- 13.4. The termination of any individual SOF (in whole or part) shall not terminate this Agreement or any other concurrent SOF which shall continue in full force and effect from their individual commencement dates unless otherwise terminated by the Parties in accordance with this Clause 13 or as otherwise agreed between the parties in writing in respect to that specific SOF.
- 13.5. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision

of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

- 13.6. Without affecting any other rights that it may be entitled to, TES may terminate the agreement: (a) in accordance with Clause 8.6; (b) Payment arrangements have been made by the Customer for payment via a third party and the third party refuse to honour TES's Fees.

Consequences of Termination.

- 13.7. On termination all outstanding unpaid invoices in respect of the Services and all Fees which, but for termination, would have been payable for any Services agreed to be provided by TES, as detailed in a SOF or other Project Documentation, (subject to TES taking reasonable steps to mitigate against the same) and any other losses including loss of profit and loss of contract suffered or incurred by TES arising directly out of or in connection with such termination (subject to TES confirming such direct losses to the Customer in writing) shall become immediately payable (except where fees are the subject of a bona fide dispute). TES shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.
- 13.8. On termination of this Agreement for any reason: (a) all licences and access to the Services granted under this agreement shall immediately terminate except: (i) if and to the extent already paid for by the Customer, and (ii) where the parties have agreed for such licences to continue until the end of any transition period under clauses 13.9, 13.10, and 13.11; (b) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party; (c) TES shall deliver to the Customer the then most recent back-up of the Customer Data by accessing the Third-Party Software within 10 business days from the effective date of termination, provided such back-up functionality is able to be accessed and utilised by TES, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination).
- 13.9. **Transition Support.** Following the service of a termination notice for any reason, TES shall for a maximum period of three months, continue to provide the Services in accordance with this Agreement, (subject to the Customer's full compliance with the Agreement and provided that all undisputed Fees are paid in full) and shall, if requested by the Customer, provide reasonable assistance to the Customer and/or any Replacement Supplier (subject to appropriate confidentiality undertakings being entered into) to the extent reasonably required to facilitate the smooth migration of the Services to the Customer, or a Replacement Supplier.
- 13.10. TES shall: (a) provide access to the Customer and any Replacement Supplier for up to three months after termination of this Agreement to such information relating to the Services that remains in the possession or control of TES; (b) use all reasonable endeavours, at the Customer's request, to assign or novate, whether in favour of the Customer or any alternative supplier,

any contract for Services between TES and any third party performing any part of the Services.

- 13.11. If termination is by the Customer as a result of TES's material breach, such reasonable co-operation and assistance shall be provided at no cost to the Customer, in all other cases TES may charge a reasonable sum at its then day rates in force (for the appropriate personnel) or for such other resource, to cover the cost of providing such co-operation and assistance (plus any expenses to be recovered at cost).

14. Liability

- 14.1. Except as expressly and specifically provided in this agreement: (a) TES shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to TES by the Customer in connection with the Services, or any actions taken by TES at the Customer's direction; (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.
- 14.2. Except as expressly provided in this Agreement and to the fullest extent permitted by applicable law the Customer shall be solely responsible, as against TES, for any opinions, recommendations, forecasts or other conclusions made or actions taken by the Customer, any client of the Customer or any other third party based (wholly or in part) on the results obtained from the use of the Equipment, Software or the Services by the Customer except and to the extent incorrect results are attributable to a fault or malfunction of any Software or the Services caused by TES.
- 14.3. This Clause 14 sets out the entire financial liability of either party to the other in respect of: (a) any breach of this Agreement; (b) any use made by the Customer of the Services and Documentation or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 14.4. Neither party excludes or limits liability to the other party for: (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by negligence; (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (d) any matter for which it would be unlawful for the parties to exclude liability.
- 14.5. Subject to clause 14.4 and except in respect to direct losses referred to in clause 13.7, neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - (b) any loss or corruption (whether direct or indirect) of data or information except to the extent attributable to TES's negligence or breach of this Agreement;
 - (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time).
- 14.6. Clause 14.5 shall not prevent claims, which fall within the scope of Clause 14.7, for tangible property or physical damage.

- 14.7. Subject to Clause 14.4, each party's total aggregate liability to the other in any 12 month period beginning on the Commencement Date or any anniversary of it (a "Contract Year") in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fees paid or payable by the Customer during that Contract Year.

- 14.8. TES's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement with regard to any third party Services shall be limited to such sum as TES actually recovers from such third party after such claim is made.

15. Force Majeure

- 15.1. Notwithstanding anything else contained in this Agreement, neither Party shall be liable for any delay or impossibility in performing its obligations under this Agreement, any Project Document if and to the extent such delay is caused by circumstances beyond its reasonable control including (including, without limitation, strikes, lock-outs or other industrial disputes (involving the workforce of other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, pandemic, each an "Event of Force Majeure") provided this was not attributable to the negligence of the Party seeking to rely on the Event of Force Majeure.
- 15.2. Subject to the Party which is entitled to claim the protection of Clause 15.1 ("Affected Party") promptly notifying the other Party in writing of the Event of Force Majeure (and the likely duration of the Event of Force Majeure), and how this makes it impossible or delays performance, the performance of the Affected Party's obligations shall be suspended during the period that the relevant circumstances persist and, if applicable to any obligation under this Agreement or Project Document the Affected Party shall be granted an extension of time for performance equal to the period of the delay. Except where such delay is caused by the act or omission of the other Party (in which event the rights, remedies and liabilities of the Parties shall be those conferred and imposed by the other terms of this Agreement and by law) any costs arising from such delay shall be borne by the Party incurring the same. Notwithstanding the above, in the event of a Force Majeure event which affects only part of the Services, the Customer shall during the course of such Force Majeure event to continue to pay for any non-affected part of the Services.
- 15.3. Both Parties will in any event use all reasonable endeavours to mitigate the impact of any Event of Force Majeure and to recommence performance of their obligations under this Agreement as soon as reasonably possible

15.4. If the period of delay exceeds 30 consecutive days then either Party has the right to terminate the applicable SOF or this Agreement with no further liability.

16. Non-Solicitation

No party shall, without the prior written consent of the other, at any time from the date of the Agreement to the expiry of six (6) months after its termination, solicit or entice away from the other or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the other. Any consent given by the other in accordance with this Agreement in writing shall be subject to the Customer paying to the other a sum equivalent to 20% of the then current annual remuneration of the other's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the other party to such employee or sub-contractor.

17. Dispute Resolution

17.1. Each Party shall use its best endeavours to resolve amicably and expeditiously any dispute which may arise between them concerning this Agreement or any Project Documents incorporated by reference therein. If a dispute cannot be resolved amicably within 7 days of such dispute being notified in writing by one Party to the other for the purposes of this Clause then the dispute shall be determined as follows: (a) if the dispute is of a technical nature concerning the interpretation of any Project Document, SOF or relating to the functions or capabilities of the Software or any similar or related matter or that the Parties agree is of a technical nature ("Technical Dispute") then such dispute shall be referred to the next scheduled project team meeting or a meeting of the Project Leads convened for this purpose; (b) If such meeting cannot resolve a Technical Dispute to the satisfaction of both Parties then the dispute will be referred as a matter of urgency to an appropriately qualified senior manager or director of each Party; (c) If such senior managers or directors cannot resolve a Technical Dispute within 21 days of the meeting referred to above or such other period that they may agree then such a dispute must be referred for final settlement to an expert nominated jointly by the Parties or, failing such nomination within 14 days of either Party's written request to the other for such referral, nominated at the request of either Party by the President from time to time of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. Each Party shall co-operate fully with the expert, including by the provision of such documentation and explanations as the expert may reasonably request. Each Party shall be entitled to make written and oral representations to the expert regarding the subject matter of the disagreement. The expert's decision shall (in the absence of clerical or manifest error) be final and binding on the Parties and his fees for so acting shall be borne by the Parties in equal shares unless he determines that the conduct of either Party or his determination of the issues is such that one Party should bear all or a greater proportion of such fees.

17.2. Non-technical disputes shall be referred as a matter of urgency to the managing directors of each Party and if they cannot resolve such dispute within 21 days of it

being referred to them then the dispute shall be determined by the English Courts and the Parties hereby submit to the exclusive jurisdiction of that court for such purpose.

18. Notices

Any notice required to be given under this agreement shall be in writing and be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes as set out in this agreement. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at 9am on the first day after delivery. Where TES are required under this agreement to give the Customer any notice in writing, TES may give this notice by letter or email.

19. General

19.1. Neither Party may assign, transfer or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, except that TES may assign within its group of companies without consent. Each Party shall remain primarily liable to the other in respect of any act or omission of any sub-contractors as if any act or omission were its own.

19.2. This Agreement, including the Schedules, supersedes all prior representations, arrangements, understandings and agreements between the Parties (whether written or oral) relating to its subject matter and expresses the entire complete and exclusive agreement and understanding between the Parties at the date of execution of this Agreement. Each Party warrants to the other that it has not relied on any representation arrangement understanding or agreement (whether written or oral) not expressly set out or referred to in this agreement. Neither party may make any claim or seek any remedy under this agreement in respect of misrepresentation (whether negligent or otherwise) or untrue statement made by the other party except that this Clause does not purport to exclude any liability for fraudulent misrepresentation.

19.3. It is the parties' intention and understanding that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as subsequently amended or re-enacted) ("TUPE") do not apply to this agreement and none of either party's staff shall transfer to the other party upon any circumstances occurring as contemplated by TUPE or otherwise by operation of this agreement. The parties shall take all reasonable steps to avoid circumstances that give rise to a situation where the provisions of TUPE are likely to apply by operation of this agreement. For the avoidance of doubt, each party shall fully indemnify and keep indemnified the other party against all costs and claims the first party may suffer arising from either the

intended or unintended transfer of personnel from the application of TUPE to the operation of this agreement.

- 19.4. Any variation of this Agreement must be in writing, and signed by an authorised representative of each of the parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent will be in writing and signed by the party whose waiver or consent is required
- 19.5. Each provision of this Agreement shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of this agreement and the remainder of the provision in question shall continue in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
- 19.6. The relationship of TES to the User is solely that of independent contractor, and nothing contained herein is intended or will be construed as establishing an employment, joint venture, partnership, and or other business relationship between TES and the User.
- 19.7. The parties confirm their intent not to confer any rights on any third parties by virtue of this agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.
- 19.8. This agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.



Schedule 1
Professional Services

Version 5.0

Definitions

The MSA and its definitions shall have effect as if set out in full in the body of this Schedule. In addition, the following definitions will apply:

"**Professional Services**" the various types of professional services which may be supplied by TES under a PID including general consultancy, scoping and design, training, implementation, installation and integration services and project management.

"**Products**" any product including Equipment and/or Software supplied by TES in accordance with this Agreement.

Provision of Professional Services

- 1.1 TES will provide Professional Services as described in the Project Documents, and in accordance with this Agreement. The Customer agrees that certain Professional Services may not be carried out at the Customer's premises.
- 1.2 **Term.** The Professional Services shall commence on the date detailed in the applicable Project Document and shall continue unless and until terminated as provided by the terms of this Agreement.
- 1.3 **Training.** TES will supply the Customer with user training on the Products as detailed in the applicable Project Document. Any additional training requested by the Customer will be charged at TES's standard rates at the time which shall include any reasonable travelling and subsistence properly incurred in the course of providing the Customer with such Professional Services.
- 1.4 **Development Services.** The provision of software development services (**Development Services**) as detailed in any SOF shall be carried out and performed in accordance with this Agreement.
- 1.5 **Migration Services.** Where specified in a SOF, TES shall use reasonable efforts to ensure the accurate migration of any data. The Customer shall be entirely responsible for checking the accuracy and completeness of the data provided to TES and any migrated data and shall promptly give sufficient details to TES of any inaccuracies or omissions in order to permit TES to correct them. TES will work with the Customer to ensure the smooth migration of any data even where such data is not in a useable order or format. However additional fees may be chargeable where any corrections or modifications to migrated data are caused by such data being in an unusable order or format.

Duties & Obligations

- 2.1 Without prejudice to any other terms of this Agreement, TES shall provide the Professional Services with all due care, skill and ability and use its reasonable endeavours to promote the interests of the Customer.

Professional Services – Cancellation Delays & Call Off

- 3.1 In the event that the Customer cancels a booking for Professional Services, TES reserves the right to charge cancellation fees according to the following provisions:
 - (a) if cancellation occurs 14 or more days prior to the scheduled performance date, no cancellation charge shall be payable, or
 - (b) if cancellation occurs 13 or less days prior to the scheduled performance date, 100% of the Fees being charged shall be payable.
- 3.2 Where the SOF specifies a number of days of Professional Services which the Customer can call off from time to time, the Customer agrees that: (a) TES will invoice the Customer for Professional Services in accordance with the SOF; (b) the dates on which the Professional Services will take place will need to be pre-agreed with TES; (c) the Customer must use all of the Consultancy days within 12 months of the date of the SOF. If the Customer fails to use all Consultancy days within 12 months of the date of the SOF, TES will invoice the Customer for any outstanding amount due at the end of the 12 months. The Customer will not be entitled to any refund of Fees for Professional Services.
- 3.3 If any order for software or Equipment is cancelled by the Customer, then the Customer shall reimburse TES for all demonstrable costs, charges and expense arising out of the order and the cancellation thereof.

Fees

- 4.1 The Customer shall pay the Fees for the Professional Services as detailed in the applicable SOF.

Development Services

- 5.1 Subject to the payment of the applicable fees as set out in the SOF, TES shall provide to the Customer any Development Services specified in a SOF in accordance with this Agreement.
- 5.2 Ensure that the source code, and any interpreted code, comprised in the Customised Software created by or on behalf of TES during the provision of the Development Services is written to a professional standard, conforms with any coding standards document agreed between the parties, and incorporates sufficient commentary to enable a competent third-party developer to understand, adapt, maintain and update the code.
- 5.3 TES shall keep the Customer reasonably informed of the progress of the Development Services and shall inform the Customer of any substantial obstacles or likely delays in the performance of the Development Services.
- 5.4 The Customer must promptly, following receipt of a written request from TES to do so, provide written feedback to TES concerning TES's proposals, plans, designs and/or preparatory materials relating to the Development Services and made available to the Customer with that written request.

- 5.5 TES shall, during the Development Services, make accessible to the Customer a current development version of the Customised Software being developed for the purposes of enabling the Customer to assess the progress of the Development Services and provide feedback to TES regarding the Customised Software.
- 5.6 If this Agreement terminates (for whatever reason) before the delivery of the completed Customised Software to the Customer, TES shall within 14 days following such termination, subject to the payment of all outstanding fees payable to that date, deliver to the Customer all work in progress towards the Development Services (except any proprietary TES or third-party materials or content).
- 5.7 TES warrants and undertakes that for 30 days after Acceptance of the Customised Software it shall without charge provide Support Services to the Customer in respect of queries the Customer has relating to the Customised Software and any bugs on front-end design and back-end functionality.

Termination of Development Services

- 6.1 If the Development Services are terminated for reasons other than TES's material breach of the Agreement:
 - (a) the Customer must pay to TES any outstanding Fees in respect of Development Services provided to the Customer before the date of effective termination of the Development Services. Whatever the reason for termination, subject to payment of all outstanding invoices, TES shall promptly deliver to the Customer such elements of the Development Services as are complete and all work in progress in respect of the same.



Schedule 2
Supply of Software and Hardware

Version 5.0

Definitions

The MSA and its definitions shall have effect as if set out in full in the body of this Schedule.

Third Party Equipment, Software & Services

1. Equipment and Software Recommendations

TES is not a manufacturer of Equipment, and all Equipment and Third-Party Software is supplied from third party sources at the request of the Customer. Any advice provided by TES on Equipment selection is based upon the requirements of the Customer's business as made known by the Customer to TES at the time of order and shall be consistent with such standard as is applicable to those providing such advice generally including recommendations made from time to time by such equipment manufacturers, or other relevant third-party software providers.

2. Supply of Equipment

TES shall supply all items of Equipment as detailed in a SOF in accordance with this Schedule, together with all related documentation provided by the third-party manufacturers of the Equipment. Unless otherwise agreed in a Project Document, the Customer shall provide all cabling and other equipment needed for the installation of Equipment at the Locations, including any equipment needed to connect and interface Equipment and Customer Equipment. TES shall provide any Equipment to the Customer on an "as is" basis and under the standard terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties' terms.

3. Supply of Third-Party Software

The Customer's use of any Third-Party Software is governed by the terms of the agreement with the provider of that Third-Party Software, and its warranties. Use of Third-Party Software is at the Customer's sole risk. Third Party Software is provided "as is" and TES is not responsible in any way for any Third-Party Software's performance, features or failures and makes no warranty in respect to the Third-Party Software being fit for the Customer's specific purposes. TES shall provide any Third-Party Software to the Customer under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence terms and to ensure that its Affiliates are bound under similar obligations owed to the relevant third parties.

4. Term and termination of Third-Party Software

Whenever TES procures Third Party Software on the Customer's behalf, unless the parties have agreed otherwise in a SOF, TES will where possible procure such Third-Party Software on rolling monthly contracts that can be terminated on a month's notice by the Customer. Where the Customer wishes to terminate a licence for any Third-Party Software, it shall notify TES in writing. TES shall advise the Customer of the consequences of such termination and work with the Customer to terminate the relevant licence at the earliest available opportunity.

5. TES Software and Customised Software

TES shall provide the TES Software and any Customised Software under the terms of the licences found in paragraphs 15 and 16 respectively, of this Schedule. TES shall develop the Customised Software in

accordance with the requirements of any technical specification as agreed in writing between the parties in a Project Document.

6. Documentation

TES shall provide to the Customer from time-to-time copies of documentation containing up-to-date information for the proper use and maintenance of any delivered Software. Such documentation may be supplied in electronic form. The Customer may provide copies of the documentation relating to the TES Software to any third party who needs to know the information contained in it, provided that such third party first enter into appropriate confidentiality obligations with TES.

7. Software Services

Where detailed in an applicable Project Document, TES shall provide Services in relation to the Software in accordance with Schedule 1.

8. Support for Third Party Software and Equipment

TES shall provide Support Services in relation to the Software and Equipment as detailed in any SOF and in accordance with Schedule 3.

9. Fees

Fees for Software and/or Equipment are detailed in the SOF and shall be payable in accordance with this Schedule, the MSA, and as detailed in any SOF. Should the Customer purchase additional Third-Party Software not covered under any existing SOF, then the Fees payable for any Support Services to be provided in respect of such additional Third-Party Software shall be discussed and agreed between the parties and detailed under a separate SOF.

10. User Acceptance Testing

On or before the applicable date or dates specified in any PID or Project Document the Customer and TES shall conduct workshops in which user acceptance test scripts will be agreed in order for user acceptance tests ("User Acceptance Tests") to be carried out. Unless otherwise agreed it is incumbent on the Customer to document the User Acceptance Test scripts under guidance from TES. The User Acceptance Test scripts should describe test procedures and provide a checklist of expected results against which pass/fail criteria can be determined. User Acceptance Tests should be sufficient to be able to satisfy the Customer that the Software and/or Equipment meet the functional needs set out in the PID or, where a specification is agreed, the specification. If TES, on reasonable grounds, considers that the User Acceptance Tests are not suitable to test whether the Software or Equipment comply with the PID or specification, it shall notify the Customer and request the Customer to make such amendments to the User Acceptance Tests as TES considers reasonably necessary.

On the testing date specified in the PID or other Project Document (or as otherwise agreed in writing between the parties), the Customer and TES shall attend the User Acceptance Tests at the relevant Location when the Customer shall process test data comprised within the User Acceptance Test scripts on the Software and/or the Equipment. TES shall, if required by the Customer, give the Customer's personnel all reasonable assistance in processing such test data.

Acceptance of the Software or Equipment (or the relevant part of the Software or Equipment) shall be deemed to have occurred on whichever is the earliest of: (a) the expiry of ten days after the completion of all the User Acceptance Tests, unless within such period the Customer gives written notice to TES of any non-conformance of the Software or Equipment with the PID or specification; (b) the expiry of ten days after the applicable Software and/or Equipment has been made available for the User Acceptance Tests to be carried out, if Acceptance Tests have not started or have not been pursued with due diligence due to a delay caused by the Customer unless such failure results from TES's failure to co-operate in the performance of the User Acceptance Tests; or (c) the use of the Software and/or the Equipment by the Customer in the normal course of its business.

Following successful completion of any User Acceptance Test the Customer shall sign an acceptance certificate for such test if requested by TES.

If the Software and/or Equipment fail to pass the User Acceptance Tests, then TES shall determine the cause of any such failure and advise the Customer of such cause. The parties shall then agree an appropriate time for repeat tests to be undertaken, provided that, the repeat test under this paragraph shall be carried out as soon as practicable (having regard to the remedial work that needs to be undertaken) following the initial User Acceptance Test. If the cause of any such failure is a defect or error in any Third-Party Software, TES shall use reasonable endeavours to carry out the repeat test within a reasonable time of the initial test.

If such repeat User Acceptance Tests demonstrate that the Software and/or Equipment (in whole or part) are still not in compliance with the PID or any agreed specification in all material respects primarily as a consequence of a defect or error within the TES Software or Customised Software then the Customer may, by written notice to TES, require TES:

- (a) to fix a new date or dates for carrying out further User Acceptance Tests on the Software and/or Equipment on the same terms and conditions as the previous tests;
- (b) if the Software and/or Equipment shall fail such further tests primarily as a consequence of a defect or error within TES Software or Customised Software then the Customer shall be entitled by written notice to TES to accept the Services subject to an amendment to the Fees. The Parties shall use their respective reasonable endeavours to negotiate in good faith in order to agree the amount of any amendment to the Fees and any support or maintenance obligation TES may have under this Agreement.

If the Customer notifies TES that the Services have passed the User Acceptance Tests or the Services are deemed to have passed the User Acceptance Tests under this paragraph, then the Customer will have no right to make any claim under or otherwise rely upon any warranty given by TES to the Customer in this Agreement in relation to the conformance of the Software and/or Equipment to the PID and/or any agreed specification or the absence of defects from the Software and/or Equipment, unless the Customer could not reasonably have been expected to have identified the non-compliant or defective aspects during the testing process.

Quotations and Delivery of Equipment and Software

11. Quotation and SOF

- 1.1 Unless otherwise detailed in a SOF, any quotation or other proposal given by TES to the Customer is valid for a period of 30 days only from its date, provided TES has not previously withdrawn it.

12. Delivery of Equipment and Software

- 12.1 TES shall:
 - (a) deliver the Equipment or Software (or make the Software available to the Customer) on the date or dates specified in the PID, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order by TES. Unless otherwise detailed in a Project Document, time is not of the essence as to the delivery of Software or Equipment.
 - (b) fully integrate the Equipment and Software with the Customer's IT infrastructure as agreed and detailed in the relevant Project Documents; and
 - (c) carry out, in conjunction with the Customer, the User Acceptance Tests.
- 12.2 Delivery shall be made during normal business hours (excluding bank or public holidays). TES may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 12.3 Unless otherwise set out in a SOF or other Project Document, TES is not responsible for unpacking, installing, or checking the Equipment or Software, which will be the responsibility of the Customer.

13. Risk and Property in Equipment

- 13.1 Risk of damage to or loss of the Equipment will pass to the Customer on delivery. Ownership of the Equipment will not pass to the Customer until TES has received in full (in cash or cleared funds) all Fees due to it in respect of the Equipment. TES will be entitled to recover payment for the Equipment notwithstanding that title in any of the Equipment has not passed from TES.
- 13.2 Until ownership of the Equipment has passed to the Customer, the Customer must maintain the Equipment in satisfactory condition and insured for their full price against all risks.
- 13.3 The Customer has a period of 7 days from receipt of the Equipment to notify TES of any defects or in transit damage.

14. Fees

- 14.1 The Customer will pay the Fees for the Equipment and Software in accordance with this Agreement.
- 14.2 Subject to paragraph 4.4, TES may change the Fees to cover: (a) any change in the fees being charged by the third-party providers of Equipment and Third-Party Software; or (b) any changes to market conditions (including, but not limited to, increases in foreign exchange rates relating to the Equipment of Software, or in labour, materials, supply or transportation costs) which affect TES at the date of delivery.
- 14.3 Subject to paragraph 4.4, TES reserves the right, by giving notice to the Customer at any time before delivery, to change the Fees of undelivered Equipment or Software to reflect any change in the cost to TES which is due to any factor beyond the control of TES (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment or Software which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give TES adequate information or instructions.
- 14.4 In the event of TES exercising its right to increase Fees under paragraphs 4.2 and 4.3:
 - (a) TES shall notify the Customer in advance of such increase providing as much notice as reasonably possible;
 - (b) TES shall provide documentary evidence of such increase;
 - (c) following notification of such increase, the Customer may give notice to terminate any licence for any Third-Party Software affected by such increase, such licence to terminate at the end of the following month.

TES Software Licence

15. TES Software Licence

Subject to the Customer's compliance with this Agreement and the parameters and limitations on the use of TES Software as detailed in a SOF, TES grants the Customer a non-exclusive, non-sub-licensable right to use the TES Software for the receipt of the Services. The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties (and except to the extent expressly permitted under this Agreement in respect to the TES Software), attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the TES Software in any form or media or by any means; or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the TES Software; or access, or allow any third party access to all or any part of the TES Software in order to build a product or service which competes with the TES Software; or licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the TES Software available to anyone except to the extent detailed in the applicable SOF or other Project Documentation.

16. Customised Software Licence

Subject to the Customer's compliance with this Agreement, TES grants the Customer a non-exclusive, perpetual, irrevocable, royalty-free licence to use the Customised Software for the Customer's ordinary business activities.



Schedule 3
Managed Services

Version 5.0

Definitions

The MSA and its definitions shall have effect as if set out in full in the body of this Schedule. In addition, the following definitions will apply:

“**Designated Hours**” means hours of support cover as specified herein or as otherwise detailed in a SOF.

“**Initial Term**” with respect to a new installation of Supported Technology shall be a period specified in a SOF commencing from the Support Commencement Date during which the Support Services will be provided.

“**Extended Hours**” means such hours, in addition to Designated Hours, as are specified herein or as otherwise detailed in a SOF and paid for by the Customer.

“**Incident**” an event which could lead to the loss of, or disruption to, operations services or functions.

“**Licence**” means any third-party software license entered into between the Customer and a Third-Party Software supplier.

“**Problem**” the cause of one or more Incidents.

“**Support Services**” means TES Services set out in this document and any Project Document referred to herein.

“**Support Commencement Date**” means the Go-Live Date unless otherwise agreed in writing between the parties.

“**Supported Technology**” means the Software in respect of which the Support Services are being provided as detailed in a SOF.

“**Super User**” means a User with Full system access.

1. Service Overview

The Support Services cover a range of different service components which can be purchased by the Customer in a modular fashion. Only those service components that are specifically listed in the SOF will form a part of the Support Services to be provided to the Customer.

TES will provide the Customer with the Support Services detailed in the SOF in accordance with this Schedule along with any additional services requested and paid for by the Customer and agreed by TES as detailed in a SOF. This Schedule describes the following service components, detailing an overview, service elements, TES responsibilities and the Customer's responsibilities along with any performance measurements provided: **Incident & Major Incident Management, Request Fulfilment, Bug & Defect Management, Change Management, Problem Management, Third Party Support, Service Management, and Release & Patch Management Assurance.**



In order for TES to provide the service components there are a number of prerequisites required of the Customer, as detailed below:

Access

The Customer will provide TES with any necessary access to Supported Technology in order to provide the Support Services remotely.

Customer Availability

In order for TES to provide the Support Services, the Customer will need to provide a contact that is adequately trained or skilled to carry out relevant activities in receiving the Support Services meaning they should be, without limitation:

- (i) capable and trained to copy files and use Windows Explorer;
- (ii) qualified with Super User or other adequate permission to debug and solve Problems with the help of TES staff;
- (iii) familiar with the functions and operation of that part of the Customer's computer system in respect of which the Support Services are required; (iv) a qualified member of the Customer support contact group if specified in an SOF.

Supported Version

If the query in respect of which the Customer requests Support Services from TES is a matter which has been fixed in a later version of the Supported Technology to the version installed on the Customer's computer system, then TES may suggest that the Customer install and use such later version of the Supported Technology provided this is the only practical way of providing a solution and would not result in a reduction in system functionality. Upgrading the Customer's Supported Technology may be subject to additional charges which will be agreed between the parties and detailed in a SOF. In such circumstances, should the Customer choose not to upgrade, then TES may charge for costs incurred in resolving the issue in the current version.

Licensing

The Customer must have the correct licensing in place for the Supported Technology. TES can provide advice, guidance and procurement of the Licenses but the Customer is responsible for ensuring these are in place.

Contact Detail

The Customer must provide up to date contact details including telephone numbers, addresses & email details.

Change Management

If the Customer makes any changes to the Supported Technology, it must advise TES as such in writing in advance, so that TES is aware of the change and can also advise on any factors the Customer may need or wish to consider.

Specification

The Customer will ensure that the Supported Technology is installed or accessed using the defined minimum specification



provided. If an issue occurs and this minimum specification is not complied with, TES will request that this minimum specification is met before providing the Support Services.

Third-Party Contracts

The Customer is responsible for any additional third-party contracts outside of any responsibilities of TES in respect of Third Party Software as detailed in the SOF. TES will engage and work with additional third parties but is not responsible for the contracts being in place or ensuring compliance with their terms.

Failure to provide or comply with any of the above may result in TES suspending the delivery of the Support Services.

The provision of the Support Services shall commence on the Support Commencement Date and continue throughout any Initial Term, and (unless otherwise stated in a specific SOF) thereafter, the provision of the Support Services shall be automatically renewed for successive rolling periods of 12 months (each a Renewal Term), unless: (a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Term, in which case the provision of the Support Services shall terminate upon the expiry of the applicable Initial or Renewal Term; or (b) otherwise terminated in accordance with the provisions of this Agreement. Unless otherwise agreed, the termination of the Support Services under a SOF shall not affect any other Services detailed in that SOF.

TES shall be entitled to increase the Fees payable for the Support Services at the start of any Renewal Term, on sixty days' prior written notice to the Customer.

2. Service Components

The following describes each service component covered in the Support Services along with service elements, TES responsibilities, the Customer's responsibilities, and any performance measurements provided.

Service Component			
2.1 Incident & Major Incident Management			
Service Level Targets	Priority	Target Response	Target Resolution
	1	0.5 hours	4 hours
	2	2 hours	8 hours
	3	8 hours	3 days
	4	16 hours	5 days
Designated Hours	This service is provided between 09.00 – 17.30 Monday to Friday, excluding UK Bank Holidays		
Component Overview	This service provides support to the Customer experiencing an interruption or total loss of service on the Supported Technology covered in this Agreement. The Scope of the service includes: - Incident logging, prioritisation and categorisation - Incident investigation, troubleshooting and diagnostics - Incident restoration or work around - Major incident Incident Reporting The following methods are to be used when reporting an incident: - Telephone on 0345 257 8241 - Online at https://totalenterprisesolutions.service-now.com		

Incident Prioritisation

The following prioritisation will be applied by TES:

Customer Impact	Critical Service		Non-Critical Service	
	No Work Around	Work Around Available	No Work Around	Work Around Available
All Users	P1	P2	P2	P3
Group of Users	P1	P2	P3	P3
Single User	P3	P4	P4	P4

Service Level Targets

The service level targets provided are only active during the defined supporting hours, the service levels will be suspended and therefore 'on hold' due to any of the following conditions:

- Awaiting a Customer response
- Awaiting a 3rd party or supplier response
- Awaiting a change to be implement

Service Element	TES Responsibilities	Customer Responsibilities
Incident logging, prioritisation & categorisation	On receipt of an authorised logged Incident TES will review and prioritise using the defined prioritisation model. Acknowledgement of the Incident will be provided to the Customer.	The Customer is responsible for logging an Incident using the defined methods. The Customer personnel logging the Incident must be authorised to do so and provide the following information: contact details, the Supported Technology the Customer is having an issue with (Dynamics NAV/BC for example), the database and where relevant the identity of the third-party provider of the Supported Technology in question, what functionality the issue is occurring in connection with (Posting a payment journal in Dynamics NAV/BC for example), a replication of the steps taken leading to the Incident and any screen shots of any error messages or supporting documentation.
Incident investigation, troubleshooting & diagnostics	TES will initially try to reproduce the reported issue, conducting 2nd & 3rd line triage and diagnostics for the Supported Technology, providing the Customer with regular updates, and interacting with relevant third parties if required.	The Customer will provide a trained contact to TES during troubleshooting should any further information, dump files, screen shots or third-party details be required.
Incident work around or restoration of service	TES where possible will provide service restoration within the agreed service level targets. Where this is not possible a workaround will be put in place with a Problem raised to investigate a permanent fix and to understand root cause. Once the service has been restored the Incident will be set to resolved. When the Customer then confirms resolution, the Incident will be closed, if there is no response from the Customer the Incident will close after 7 days.	The Customer will provide relevant access for TES to implement a fix or workaround for the reported Incident. Where the fix or work around requires the Customer to make changes to versions or specifications the Customer will work with TES to ensure these remediation steps are implemented. The Customer will confirm that service has been restored or the workaround provided has enabled the affected service to continue.
Major Incident	On receipt of an Incident which is prioritised as a priority one, TES will ensure the management of the Incident is handled by a dedicated resource ensuring regular updates are provided to the Customer in both email and by telephone. Once the service has been restored a major Incident report will be created and provided to the Customer which will include a timeline, lessons learnt, root cause and recommendations.	The Customer will raise a priority one Incident by contacting TES's service desk by telephone. If the Incident is raised using email or portal this will not be treated as a priority one. The Customer will provide a contact point for TES for communication and troubleshooting. On receipt of the major Incident report the Customer will review any recommendations made by TES and if these are not implemented and the Incident reoccurs TES may not be able to provide the Support Services.

Service Component	2.2 Request Fulfilment
Service Level Targets	3 working days
Designated Hours	This service is provided between 09.00 – 17.30 Monday to Friday, excluding UK Bank Holidays
Component Overview	This service provides the Customer with a defined catalogue of service request that can be requested and fulfilled by TES. The Scope of the service includes: • Raising and reviewing service requests • Managed service requests • Fulfilling service requests Raising a Service Request The following methods are to be used when reporting an incident: • Telephone on 0345 257 8241 • Online at https://totalenterprisesolutions.service-now.com

Service Element	TES Responsibilities	Customer Responsibilities
Raising and reviewing service requests	On receipt of an authorised service request TES will initially review and approve the request assigning it to the relevant team to fulfil. If the request is reviewed and falls under the Change Management service component instead, the request will be rejected, and the Customer informed that a change needs to be raised.	The Customer is responsible for raising a service request using the defined methods providing as much information as possible so that TES can fulfil the request. If the correct level of detail is not provided the service level target will be paused until the information is received.
Managing service requests	TES will manage the request through to fulfilment providing timely updates to the Customer. If at any point during the request TES needs input from the Customer in order to continue with the request the service level target will be paused until a response is received from the Customer.	The Customer will provide a point of contact for TES to provide updates to on the progress of the request and to be contacted should any additional information be required.
Fulfilling service request	Once TES has fulfilled the service request the Customer will be informed and asked for confirmation to close the request. TES will attempt three times to request such confirmation. If such confirmation is not received TES will close the request down and the request will be deemed to have been dealt with. Should the Customer then respond after these attempts requesting further support then a separate service request should be raised.	On notification, the Customer should confirm that they are satisfied that the request has been fulfilled. In the event that the Customer is not satisfied, they should notify TES, and provide details demonstrating that the request has not been fulfilled.

Service Component	2.3 Bug & Defect Management
Service Level Targets	N/A
Designated Hours	This service is provided between 09.00 – 17.30 Monday to Friday, excluding UK Bank Holidays
Component Overview	This service provides the Customer support when a bug or defects occur in the Supported Technology which could have resulted due to a change, upgrade or release. The Scope of the service includes: • Reporting & Validating bug or defect • Triaging • Bug or defect resolution The Customer must inform TES before making any changes that may affect the Supported Technology. This will ensure TES can assess any impact before the change is implemented. Any bug or defects created due to a Customer change may not be supported. Raising a Bug or Defect In order to raise a bug or defect the Customer has the following methods available: • Telephone on 0345 257 8241 • Online at https://totalenterprisesolutions.service-now.com

Service Element	TES Responsibilities	Customer Responsibilities
Reporting and validating a bug or defect	On receipt of an authorised report of a bug or defect TES will review and prioritise. TES will initially try to replicate the bug or defect.	The Customer is responsible for reporting any bug or defect on the Supported Technology using the defined methods. The Customer will provide details of the bug or defect, steps to replicate the issue and any supporting screen shots. The Customer will need to also confirm if any changes have recently been made that could have caused the bug or defect.
Triaging	TES will investigate the reported bug or defect to understand: if this is a known error and therefore any workarounds are in place; or, whether the bug or defect is new. If the bug or defect is new, further investigation will continue to resolution or to an effective workaround. TES will provide the Customer with timely updates during the triage process.	The Customer will provide a point of contact to TES to assist with the triage process, and try any workarounds provided by TES. The Customer will assist with providing any additional screen shots or error files on request of TES.
Bug or defect resolution	TES will provide a solution to the reported bug or defect, this may require a work around, a version upgrade, change or if occurred due to a Customer change TES may advise for the change to be rolled back.	If the bug or defect is known and a version upgrade is required in order to resolve it, the Customer will need to upgrade in order for TES to continue providing the Support Services. If the bug or defect is due to a change conducted by the Customer, TES may advise that this needs to be rolled back to remove the bug or defect.

Service Component	2.4 Change Management
Service Level Targets	N/A
Designated Hours	This service is provided between 09.00 – 17.30 Monday to Friday, excluding UK Bank Holidays
Component Overview	This service provides the Customer with the ability to request a change to the Supported Technology. This may include an enhancement, resolving a bug or defect, or implementing a change to the code to meet legislations or applicable standards. TES will provide the below within the scope of this service: Change review & estimation Raising a change There are two main methods in which a change can be requested. This could be through your account manager or via a bug or defect that has been raised. Any changes raised may be subject to additional charges which will be estimated by TES and agreed to by the Customer, and depending on the scale may require a project manager.

Service Element	TES Responsibilities	Customer Responsibilities
Change estimation	On receipt of a change request TES will contact the Customer's named contact to discuss the requirement. Following this, an estimate will be provided to the Customer with a full specification of the work required.	The Customer is responsible for providing a single point of contact for TES to gather the requirements for the change request. The contact must be able to provide the full details on what the change needs to achieve. On receipt of the change estimation the Customer should advise whether they want to proceed, this will then require a purchase order to be created.

Service Component	2.5 Change Management
Service Level Targets	N/A
Designated Hours	This service is provided between 09.00 – 17.30 Monday to Friday, excluding UK Bank Holidays
Component Overview	This service provides proactive management of the Supported Technology and should be used in the following scenarios: • Major Incident - Following a major Incident if a workaround is provided to restore service but the root cause of the Incident is unknown, a Problem will be created to identify the root cause. • Bug or Defect Reporting - If a bug or defect is reported and has a workaround or is a known error, a Problem will be created to identify the permanent fix. • Patterns & Trend Analysis - If during service reviews or incident management patterns or trends are identified, a Problem will be created to investigate the reason for the trends / pattern. • The Customer will be responsible for providing TES with any supporting evidence or information to ensure effective Problem management.

2.6 Third-Party Support	
Service Component	
Service Level Targets	N/A
Designated Hours	This service is provided between 09.00 – 17.30 Monday to Friday, excluding UK Bank Holidays
Component Overview	In order for TES to provide the Support Services the Customer must have the correct underpinning contracts in place with the relevant suppliers for the Supported Technology. TES will work with these third parties to ensure effective Incident, change, Problem, and request management, but TES is not responsible for the third parties and will not be liable or obliged to provide the Support Services to the extent that it is prevented from doing so due to an underpinning contract with another supplier. In this event TES would need to pause or terminate the Support Services to the Customer until the correct contracts are in place. Where TES needs approval to engage with the relevant third parties, the Customer will be responsible for ensuring this approval is in place.

2.7 Service Management	
Service Component	
Service Level Target	N/A
Designated Hours	This service is provided between 09.00 – 17.30 Monday to Friday, excluding UK Bank Holidays
Component Overview	This service provides the following to the Customer: • Escalation • Service reviews & reporting • Customer satisfaction surveys

Service Element	TES Responsibilities	Customer Responsibilities
Escalation contact	TES will provide an escalation process and contact details in the event that the Customer does not feel they are receiving the correct level of service. On receipt of an escalation TES will investigate and respond accordingly.	The Customer will ensure they are aware of the service level targets in place and not escalate unnecessarily. Any escalation should be sent via email to the contact provided.
Service reviews & reporting	TES will conduct a service review with the Customer at an agreed frequency. The service review will cover the service report, any escalations during that period, continual service improvements and the Customer's future roadmap.	The Customer is responsible for attending the service review and providing any feedback on the service. The Customer should also inform TES of the organisation's strategic direction, pipeline and any new business requirements.
Customer satisfaction survey	TES will provide a forum for the Customer to have the opportunity to feedback on the service received. This will then aid any service improvement opportunities and will also allow TES to feedback positive experience to the team providing the service.	The Customer is responsible for utilising the Customer survey to provide constructive feedback to TES providing the opportunity to continually improve the service provided.

Service Component	2.8.1 Release & Patch Management Service (On-premise)
Service Level Target	N/A
Designated Hours	This service is provided between 09.00 – 17.30 Monday to Friday, excluding UK Bank Holidays
Component Overview	This service component will only be available where the Customer has purchased an on-premise solution. Microsoft provides cumulative updates which can include several hotfixes along with new features which are created as a release and made available for deployment. This proactive service covers the below: • Assessment & Advisory • Planning & Development • Testing – non functional • Release & Deploy • Defect Handling • Forward schedule of change This service ensures that the Customer is provided an assessment in which an informed decision can be made as to whether or not the release is required. For support purposes all releases should be applied but the assessment will indicate the scale, any downtime required and what improvements or enhancements this will bring to the Customer, it may be that the release also resolves an outstanding bug or defect. Once a decision has been made TES will plan, develop, test, schedule and deploy the release.

Service Element	TES Responsibilities	Customer Responsibilities
Assessment & advisory	On notification that a preview of the release is available TES will review, analyse and provide the Customer with the content along with initial scale of the release and any development requirements.	The Customer will setup TES with access to any administration consoles or notifications for TES to manage the assessment and advisory stages of the release. The Customer will provide a contact for TES to provide information on the content of the release, upgrade or patch to and who is also authorised to agree to move to the planning stage. The Customer will also ensure that any Customer specific code and configuration, along with non-production environments are available to TES to check for any conflicts before the deployment into production environments.
Planning & development	On approval to proceed with the release TES will start planning the work for the release and identifying any potential conflicts in the release. TES will also work on any development required to resolve any potential conflicts using the Customer's nonproduction environments.	The Customer will ensure that TES always has access to the relevant application, code, configuration and environment during this time.
Testing	TES will conduct Unit testing in a test or sandbox environment on the developed code or configuration providing the results and sign off to the Customer.	The Customer will conduct functional testing and provide TES with sign off on acceptance to proceed with the release and deploy phase. The Customer will also ensure that a sandbox or equivalent test environment is available to TES.
Release & deploy	TES will work with the Customer to agree a maintenance window to deploy the release in a production environment. TES will document release notes and adhere to any change management process the Customer may have, ensuring that the changes are authorised to be released into the production environment.	The Customer will ensure that maintenance windows are communicated within the user base and will also ensure that TES has the correct level of access to deploy the changes. Where relevant the Customer will provide a technical resource as a contact point who will carry out any of the infrastructure parts of the deployment.
Defect handling	On identification of defects due to a new release, TES will raise such defects as known errors and log with 3rd parties where required.	On identification of any issues experienced after a release, the Customer must raise the issue using the support route identified providing as much detail as possible, including any error messages, screen shots, replication steps and contact details.

Forward schedule of change	TES will provide the Customer with a forward schedule of releases that details timelines for any changes, releases, upgrades and patches due to be deployed in the production environment.	The Customer will provide a contact to liaise with TES to ensure that there are no conflicts in the forward schedule of change, and any planned outage windows are communicated to the user base, providing the relevant resource for testing and sign off.
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Service Component		2.8.2 Release & Patch Management Assurance (SaaS)
Service Level Target	N/A	
Designated Hours	This service is provided between 09.00 – 17.30 Monday to Friday, excluding UK Bank Holidays	
Component Overview	This service component will only be available where the Customer has purchased a SaaS solution. As a SaaS customer, releases, upgrades and patches are automated. This could put the Customer in the position where it is impacted by these updates, and they could potentially cause unplanned and prolonged outages. This service provides the ability to foresee and resolve potential issues that a release, upgrade and patch may cause. This service covers: • Assessment & Planning • Code / Configuration Development • Testing – non functional • Release & Deploy • Defect Handling • Forward schedule of change Where the SaaS provider has deemed a patch to not impact anything related to code or configuration these will be automatically applied to the Customer's instance. The provider themselves may have conducted several standard tests that ensures code or configuration is not impacted. However, where this does have an impact, TES will work with the provider on behalf of the Customer on the defect handling and resolution.	

Service Element	TES Responsibilities	Customer Responsibilities
Assessment & planning	On notification that a preview of the release, upgrade or patch is available TES will provide the Customer with the content of that preview. On notification of early release TES will conduct an assessment to understand any conflicts with IP and Customer specific code or configuration. Where possible TES will also work with the Customer on an agreed date for the release to take place in the production environment in the upgrade window. Where this is not possible, TES will advise on the date provided by the SaaS provider.	The Customer will set up TES with access to any administration consoles or notifications for TES to manage the assessment and planning stages of the release, upgrade or patch. The Customer will provide a contact for TES to provide information on the content of the release, upgrade or patch to. The Customer will also ensure that any Customer specific code or configuration is always available to TES in order to check for any conflicts before the deployment into production environments.
Code or configuration development	On identification of conflicts in a new release, upgrade or patch during the early release window, TES will develop the code or configuration to resolve the conflicts before the SaaS deployment into production.	The Customer will ensure that TES always has access to the relevant code or configuration and any required interfaces or tools in order to develop the code or configuration.
Testing	TES will conduct Unit testing in a test or sandbox environment on the developed code or configuration, providing the results and sign off to the Customer.	The Customer will conduct functional testing and provide TES with sign off on acceptance to proceed with the release and deploy phase. The Customer will also ensure that a sandbox or equivalent test environment is available to TES.
Release & deploy	TES will document release notes and adhere to any change management process the Customer may have, ensuring that the code or configuration changes are released into the production environment in line with the SaaS provider's, and under the agreed, maintenance windows.	The Customer will ensure that maintenance windows are communicated within the user base, and will also ensure that TES has the correct level of access to deploy the change of code or configuration.
Defect handling	On identification of defects due to a new release, upgrade or patch TES will raise such defects as known errors, and update in accordance with the SaaS provider's update, any relating code or configuration issues will be updated by TES.	On identification of any issues experienced after a release, upgrade or patch the Customer must raise the issue using the support route identified in the Incident component providing as much detail as possible including any error messages, screen shots, replication steps and contact details.

Forward schedule of change

TES will provide the Customer with a forward schedule of releases that details timelines for any changes, releases, upgrades and patches due to be deployed in the production environment.

The Customer will provide a contact to liaise with TES to ensure that there are no conflicts in the forward schedule of changes and any planned outage windows are communicated to the user base, providing the relevant resource for testing and sign off.



Data Processing Addendum

Version 5.0

Document Control and Approval

This Schedule sets out the additional terms, requirements, and conditions on which TES will process personal data when providing the Services under this Agreement. This Agreement contains the mandatory clauses required by Article 28(3) of the General Data Protection Regulation ((EU) 2016/679) for contracts between controllers and processors.

The table below sets out the subject-matter, nature and purpose, duration of the processing, the type(s) of personal data being processed, and the categories of data subjects, as required by Article 28(3) of the General Data Protection Regulation ((EU) 2016/679), as well as details of any third-party processors already engaged by TES on the Commencement Date of the Agreement (the “[Table](#)”):

Data Processing Details

Subject matter	The provision of services as detailed in the Sales Order Form and Project Documentation relating to the Services and Deliverables and the administration of them.
Nature and purpose	Except for the administration of the contract with the Customer, the processing of personal data is entirely incidental to the service provision by TES and is limited to storage and authorised disclosure. No access or changes to, or other processing of any personal data is carried out as part of the service provision other than as may be required on the Customer’s specific written instructions.
Duration	For the duration of service provision. Data is automatically deleted following termination of the Master Services Agreement in accordance with its terms.
Types of personal data	(1) Customer employee contact information for the administration of the contact. (2) As may be included by the Customer in any uploaded data. TES have no control over or visibility of this information.
Categories of Data Subject	(1) Customer employee administrative contacts. (2) As may be included by the Customer in any uploaded data. TES have no control over or visibility of this information.
Third Party Processors	[TBC]. Please see clause 5.3 below regarding TES’s obligations in relation to sub-processors.

Definitions

“Applicable Laws”: the law of the European Union (for so long as and to the extent that they apply to the Data Processor), the law of any member state of the European Union and/or the UK Data Protection Legislation and any other law that applies in the UK.

“controller”, “processor”, “data subject”, “personal data”, “personal data breach”, “processing” and “appropriate technical and organisational measures”: as defined in the Data Protection Legislation.

“Data Protection Legislation”: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

“UK Data Protection Legislation”: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

For the purposes of this Schedule, the Customer will be referred to as the **“Data Controller”**, and TES will be referred to as the **“Data Processor”**.

1. Compliance with Data Protection Legislation

- 1.1. This Schedule is intended to ensure that the Data Controller's appointment of the Data Processor is compliant with Data Protection Legislation, and the Data Processor may, at any time on not less than 30 days' notice, revise this Schedule by replacing it with any applicable controller to processor standard clauses or similar terms approved by the relevant supervisory authority forming part of an applicable certification scheme to which the Data Processor is subject.
- 1.2. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 1.2 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 1.3. The Data Processor shall, in providing the Services, comply with its privacy policy relating to the privacy and security of personal data as may be notified to the Data Controller from time to time, as such document may be amended from time to time by the Data Processor in its sole discretion.

2. Roles of the parties

The parties acknowledge that for the purposes of the Data Protection Legislation, the Data Controller is the controller and the Data Processor is the processor. The Table sets out the scope, nature and purpose of processing by the Data Processor, the duration of the processing and the types of personal data and categories of Data Subject.

3. Data Controller's Responsibilities

Without prejudice to the generality of Clause 1.1, the Data Controller will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Data Processor and/or lawful collection of the personal data by the Data Processor on behalf of the Controller for the duration and purposes of this Agreement.

4. Data Processor's Responsibilities

Without prejudice to the generality of Clause 1.1, the Data Processor shall, in relation to any personal data processed in connection with the performance by the Data Processor of its obligations under this Agreement:

- (a) process that personal data only on the documented written instructions of the Data Controller unless the Data Processor is required by Applicable Laws to otherwise process that personal data. Where the Data Processor is relying on Applicable Laws as the basis for processing personal data, the Data Processor shall promptly notify the Data Controller of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Data Processor from so notifying the Data Controller;
- (b) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to: the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage of the data; and the nature of the data to be protected, in all cases having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to 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 personal data are obliged to keep the personal data confidential; and
- (d) not transfer any personal data outside of the European Economic Area and the United Kingdom unless either: the Commission has decided, in accordance with Article 45 of the General Data Protection Regulation ((EU) 2016/679), that the third country, a territory or one or more specified sectors within that third country, or the

international organisation to which personal data is to be transferred, ensures an adequate level of protection; or, the following conditions are fulfilled:

- (i) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer; and
- (ii) the data subject has enforceable rights and effective legal remedies, where, in all cases, the Data Processor complies with reasonable instructions notified to it in advance by the Data Controller with respect to the processing of the personal data;
- (e) assist the Data Controller, at the Data Controller's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Data Controller without undue delay, and where practicable, within 48 hours, on becoming aware of a personal data breach;
- (g) at the written direction of the Data Controller, delete or return personal data and copies thereof to the Data Controller on termination of the Agreement unless required by Applicable Law to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and allow for audits by the Data Controller or the Data Controller's designated auditor, only so far as is necessary in order to demonstrate compliance, provided that the Data Controller: provides the Data Processor with no less than 30 days' notice of such audit or inspection; and the parties agree the scope, duration, and purpose of such audit or inspection in advance. If the Data Controller becomes privy to any confidential information of the Data Processor as a result of this clause 4(h), the Data Controller shall hold such confidential information in confidence and, unless required by law, not make the confidential information available to any third party, or use it for any other purpose. The Data Controller acknowledges that the Data Processor shall only be required to use reasonable endeavours to assist the Data Controller in procuring access to any third-party assets, records or information as part of any audit.

5. Third-Party Processors

- 5.1 The Data Controller acknowledges and consents to the appointment on the Commencement Date by the Data Processor of the third parties listed in the Table as sub-processors of the personal data being processed under this Agreement.
- 5.2 The Data Processor confirms that: (a) it shall impose on all sub-processors the same data protection obligations as set out in clauses 1, 4, and 5; and (b) such sub-processors as referred to in clause 0 are common to all customers of the Data Processor and the Data Processor shall remain fully liable for the actions of its sub-processors at all times.
- 5.3 The Data Processor shall give the Data Controller prior notice of the appointment of any new sub-processors and provide the Data Controller with full details of the processing to be undertaken by the sub-processor, thereby giving the Data Controller the opportunity to object to such appointment. If the Data Processor so notifies the Data Controller of any changes to sub-processors and the Data Controller objects to such changes, the Data Controller will be entitled to terminate this Agreement (without liability for either party, and such termination will be deemed to be a no-fault termination) if the Data Controller has reasonable grounds for objecting to such changes by reason of the changes causing, or being likely to cause, the Data Controller to be in breach of the Data Protection Legislation.