

Terms & Conditions

May 2019



SYSGROUP TERMS AND CONDITIONS

These Terms and Conditions ("**Conditions**") apply to all orders for the provision of Services that the Customer places with SysGroup Trading Limited and sets out all the terms in relation to the Supplier supplying Services to the Customer. By signing these Conditions, agreeing a Statement of Work and/or allowing the Supplier to commence the Services, the Customer acknowledges and agrees that it shall be bound by these Conditions.

1. DEFINITIONS

1.1. In these Conditions, the following words have the meanings set out below.

"Acceptable Use Policy" means the Supplier's Acceptable Use Policy, as set out in Schedule 1;

"Additional Charges" means charges which become payable for services provided outside the scope of a SOW such as advanced support, custom programming or configuration, or software set up which is not referred to in the SOW, or for services provided after the completion of a SOW;

"Additional Terms" means any relevant applicable terms and policies specific to the type of Services to be provided as set out in the SOW, including those of any third party and any applicable Schedules annexed thereto or to these Conditions;

"Agreement" has the meaning given in clause 2.1;

"Authorised Users" means those employees, agents, independent contractors and other third parties appointed by the Customer and set out in the SOW (where and to the extent that the SOW expressly permits this) and any other persons approved by the Supplier in writing to use the Services and/or Deliverables on behalf of the Customer from time to time;

"Change Control Procedure" means the procedure described in clause 9;

"Change Request" means a request for a change to be made by either party to the services in accordance with clause 9;

"Cloud Services Terms" means the terms in relation to cloud services as set out in Schedule 4 and **"Cloud Services"** is as defined therein;

"Commencement Date" has the meaning given in clause 2.1;

"Confidential Information" means all information that a reasonable person in the position of the recipient would consider to be of a confidential nature (whether or not marked as confidential) including but not limited to, computer programs, codes, algorithms, formulas,

processes, ideas, inventions, schematics and other technical, business, financial and product development plans, forecasts, customer lists, strategies or other information but shall exclude the Excluded Information with effect from the date that it becomes Excluded Information;

"Customer Equipment" means any equipment, hardware, goods, systems, cabling or facilities provided by Customer and used directly or indirectly in the supply of the Services

"Data" has the meaning given in Schedule 4;

"Deliverable" means all Equipment, Documents, goods and/or materials developed by the Supplier or its agents, subcontractors, consultants and employees' to be supplied pursuant to a SOW or ancillary to the supply of the Services in any form, including hardware, software, computer programs, accessories, articles, manuals, documentation, data, reports and specifications (including drafts);

"Developed Software" has the meaning given in Schedule 6;

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

"Equipment" means any other physical devices supplied which includes physical, tangible parts or components of a computer, such as the central processing unit, monitor, keyboard, computer data storage, graphic card, sound card, speakers and motherboard and any other physical device or hardware or accessories used in or with computing or telephony equipment (including additions thereto and replacements or substitutions thereof) as detailed in the quote, SOW or any accompanying Schedule annexed thereto;

"Equipment Terms" means the terms in relation to the supply of Equipment, as set out in Schedule 7;

"Excluded Information" means information which: (i) was or becomes publicly known through no default or breach of any of the Agreement by the receiving party; (ii) was or becomes lawfully known to the receiving party without restriction from a source other than the disclosing party who itself obtained it without any confidentiality obligation or which has been demonstrated by the receiving party to the disclosing party to have been independently developed by the receiving party; or (iii) is approved for disclosure by the party which has provided it without restriction in a document which is signed by a duly Authorised Representative of such party;

"Expenses" means reasonable expenses incurred by the Supplier in attending the Location, and/or the Customer's offices (or other premises at the request of the Customer) to perform its obligations under the Agreement including reasonable accommodation, travel and subsistence expenses and any other reasonable expenses or disbursements;

"Fees" means the fees and charges payable by the Customer for the Services and all other fees and charges payable by the Customer to the Supplier in accordance with the Agreement and any related SOWs;

"Force Majeure Event" means any circumstances beyond the reasonable control of the party including, but not limited to, any act of God, war, riot, civil commotion, terrorism, malicious damage, act of government or other competent regulatory body, lightning, hurricane, storm, fire, flood, or other extreme weather or environmental conditions, communication line failure, viruses, Trojan horses, worms, logic bombs, denial of service attacks or similar matters;

"Initial Term" means the initial fixed period of 3 years for which the Agreement will remain in force pursuant to clause 2, unless varied by a SOW;

"Intellectual Property Rights" or "IPRs" means (i) design rights, trade and service marks, rights in domain names and trade and business names and passing off, rights to inventions, patents, copyright and related rights, database rights, rights in get-up, rights in confidential information, know-how and trade secrets; (ii) all other intellectual property rights either registered or unregistered and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) any applications for and extensions and renewals to any such rights and the right to apply for them and all goodwill associated with them that may arise from time to time anywhere in the world;

"Losses" means any losses, liabilities, damages, costs, claims and expenses of whatever nature;

"Normal Business Hours" means 9.00 am to 5.30 pm inclusive on each Working Day;

"Online Backup Services" has the meaning given in Schedule 4;

"Professional Services Terms" means the terms in relation to professional services as set out in Schedule 6 and **"Professional Services"** is as defined therein;

"Project Materials" has the meaning given in Schedule 6;

"Proof of Concept" means the trial of a Service by a Customer before its official release as a Service by the Supplier;

"Rates" means the Supplier's standard time and material rates applicable from time to time as varied from time to time by not less than 30 days' prior written notice from the Supplier to

the Customer provided that any increase does not exceed the equivalent percentage increase in the Retail Prices Index in the previous 12 months plus 2%;

"Retail Prices Index" or "RPI" means the arithmetical average of the monthly rates of the index called "General Index of Retail Prices – All items (Excluding Mortgages)" for each year as published in the Office of National Statistics "Monthly Digest of Statistics" or any replacement index from time to time;

"Services" means the managed IT services that the Supplier agrees to provide to the Customer as set out in each SOW including any Deliverables, Equipment, Software, Cloud Services, Professional Services and/or Support and Maintenance Services or any other services agreed to be provided by the Supplier to the Customer, pursuant to the Agreement and **"Service"** shall be construed accordingly;

"Software" has the meaning given in Schedule 3;

"Software Licence Terms" means the terms in relation to the licensing of Software as part of the Services as set out in Schedule 3 and **"Software Licence"** is as defined therein;

"SOW" means a statement of work which sets out an agreement for the provision of Services by the Supplier to the Customer agreed in accordance with clause 2;

"Supplier" means SysGroup Trading Ltd (company number: 04754200) whose registered office is at Walker House, Exchange Flags, Liverpool L2 3YL;

"Supplier Equipment" means any equipment, hardware, goods, systems, cabling or facilities provided by Supplier and used directly or indirectly in the supply of the Services (but not comprising the Equipment);

"Support and Maintenance Services Terms" means the terms in relation to the support and maintenance services as set out in Schedule 5 and **"Support and Maintenance Services"** is as defined therein;

"Term" means the term of the Agreement as determined in accordance with clause 2;

"Third Party Software" has the meaning given in Schedule 3; and

"Working Day" means any day that is not a Saturday, Sunday or an English public or bank holiday.

1.2. In these Conditions:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- (b) each of the Customer and the Supplier shall be a **party** and together they shall be the **parties**;

- (c) the Schedules, appendices and annexes form part of the Agreement and shall have effect as if set out in full in the body of these Conditions. Any reference to the **Agreement** includes the Schedules, appendices and annexes to these Conditions and any and all applicable SOWs entered into between the parties at the relevant time;
- (d) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (e) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (f) a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
- (g) a reference to **writing** or **written** includes email;
- (h) any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- (i) references to clauses and Schedules are to the clauses and Schedules of these Conditions and references to paragraphs are to paragraphs of the relevant Schedule;
- (j) any words following the terms 'including', 'include', 'includes', 'included', 'in particular', 'for example' or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (k) references to clause and schedule headings are for convenience only and shall not affect their interpretation;
- (l) references to a party and to the Customer or the Supplier shall include references to their respective permitted successors and assigns and references to any agreement or document shall include references to such agreement or document as amended, extended, renewed or novated from time to time. References to a defined term shall include references to its subject matter as varied from time to time in accordance with the Agreement; and
- (m) dates and times are references to dates and times in England.

2. COMMENCEMENT AND DURATION

- 2.1. These Conditions form part of an agreement pursuant to which the Customer and the Supplier agree to enter into SOWs from time to time detailing the provision of Services by the Supplier to the Customer (the "**Agreement**"). The Agreement shall commence on the earlier of the date these Conditions are signed by the parties or on the commencement of the first SOW (the "**Commencement Date**").

2.2. Unless terminated earlier in accordance with clause 12, the Agreement shall continue for the Initial Term and shall automatically extend for a period of 12 months (the "**Extended Term**") at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than 3 months before the end of the Initial Term or the relevant Extended Term, to terminate the Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.

3. PROCESS FOR AGREEING A SOW

3.1. The Agreement including these Conditions govern the relationship between the parties in relation to the Services provided by the Supplier to the Customer and sets out the procedure for the Customer to request the provision of Services from the Supplier under separate SOWs. Each SOW (including any accompanying Schedules) will set out the terms specific to particular Services.

3.2. The Customer shall be entitled from time to time to request in writing the provision of services from the Supplier and where the Supplier is willing to provide the requested services to the Customer, it shall provide the Customer with a draft SOW for the Customer's approval.

3.3. On signature of a SOW by an authorised representative of each party, it shall form a binding contract between the parties for the supply of the Services concerned, comprising the SOW and the Agreement, to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document) or which are implied by trade, custom, practice or course of dealing.

3.4. If there is any conflict, contradiction or ambiguity between the provisions of: (i) these Conditions and a SOW then the terms of the SOW shall prevail; (ii) the main body of these Conditions and the Schedules, the terms of the Schedules shall prevail.

3.5. Each SOW shall form a separate contract between the parties.

3.6. No addition to or variation of or attempted exclusion of any term of the Agreement shall be binding on the Supplier unless documented in writing and signed by the Authorised Representative of both parties.

3.7. The Supplier shall not be obliged to supply Services until a SOW has been signed by the Authorised Representatives of both parties. However, if the Supplier does agree to supply Services to the Customer without an authorised SOW in place then unless the parties expressly otherwise agree in writing all such Services shall be deemed to be supplied upon, and subject to, these Conditions.

3.8. All samples, drawings, descriptive matter, specifications, technical data and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's website,

catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of a contract between the Supplier and the Customer and this is not a sale by sample.

3.9. If the SOW includes:

- (a) the supply of Software, the Software Licence Terms will apply to the SOW
- (b) Cloud Services, the Cloud Service Terms will apply to the SOW;
- (c) Support and Maintenance Services, the Support and Maintenance Services Terms will apply to the SOW;
- (d) Professional Services, the Professional Services Terms will apply to the SOW; and
- (e) the supply of Equipment, the Equipment Terms will apply to the SOW.

4. DELIVERY AND PERFORMANCE

- 4.1. Unless otherwise agreed in writing by the Supplier, delivery of any Deliverables and/or the performance of any Services shall take place at the Customer's place of business in the United Kingdom ("**Location**") as set out in the respective SOW. All carriage charges in relation to the delivery of any Deliverables, including all costs in relation to transport, insurance and unloading the Deliverables at the place of delivery, shall be borne by the Customer.
- 4.2. Any dates specified by the Supplier for delivery of the Deliverables and/or performance of the Services are intended to be an estimate and time for delivery is not of the essence (and shall not be made so by notice). If no dates are so specified, delivery and/or performance, as applicable, shall be within a reasonable time. Should expedited delivery of any Deliverables be agreed, the Supplier reserves the right to levy an extra delivery charge.
- 4.3. Save as otherwise provided the Supplier may deliver Deliverables by separate instalments and perform the Services in separate tranches. Each separate instalment or tranche shall be invoiced and paid for in accordance with the provisions of the Agreement. Any delay in delivery or termination of any instalment will not entitle the Customer to terminate the Agreement as a whole, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery.
- 4.4. The Services shall be supplied, where applicable, subject to the Supplier's Acceptable Use Policy.
- 4.5. Where the Customer is unavailable or unprepared to take delivery after receiving prior notification from the Supplier that the Services or Deliverables are ready for delivery then the Supplier reserves the right to: (i) invoice the Customer for the Supplier's respective costs which shall be calculated in accordance with the Rates; and/or (ii) store and/or dispose of the Deliverables as it sees fit, and charge the Customer for any shortfall in disposal proceeds.

5. RISK AND TITLE

- 5.1. Risk of loss of or damage to any Deliverables will pass to the Customer upon delivery to the Customer.
- 5.2. Notwithstanding the passing of risk under clause 5.1 above, title will only pass to the Customer when payment has been made to the Supplier of all sums due to it for: (i) the SOW under which the Deliverables are supplied and (ii) under any other SOW between the Customer and Supplier on any account whatsoever. If payment has already been received in full, then title passes to the Customer upon delivery. Until such time as property in the Equipment passes to the Customer, the Customer shall:
- (a) hold the Deliverables as the Supplier's fiduciary agent and bailee;
 - (b) keep the Deliverables properly stored, insured and identified as the Supplier's property; and
 - (c) the Supplier shall have a lien over any of the Customer's assets in its possession or control.

6. CUSTOMER OBLIGATIONS

- 6.1. The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
 - (b) promptly provide such information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
 - (c) ensure that any Customer Equipment used in relation to the Services is in good working order, suitable for its purpose and conforms to all relevant safety standards and requirements;
 - (d) ensure that its employees, agents and contractors co-operate with the Supplier in all matters relating to the Services and that such persons will be suitably qualified to carry out such tasks as they will be required to carry out throughout the Term of the Agreement;
 - (e) be responsible and at its own cost prepare the Location for the supply of the Services and/or the delivery of any Deliverables;
 - (f) comply with its obligations and responsibilities set out in the Agreement, including in relation to the use of the Services;
 - (g) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Location;
 - (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, Software, the use of information and the use of the

- Customer Equipment in relation to the Suppliers Equipment, in all cases before the date on which the Services are to start; and
- (i) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 6.2. The Customer agrees to provide or procure the provision for the Supplier free of charge during Normal Business Hours (and such other times as the Customer may agree in writing) with such computer facilities, desks, word processing, copying and other office facilities at the Customer's premises including its employees, agents and contractors (and the premises where Deliverables provided by the Supplier are to be installed or Services delivered unless installation / provision is to be at the Supplier's premises) as may be reasonably required to enable the Supplier to properly fulfil its obligations under the Agreement.
- 6.3. The Customer may not make adaptations, modifications or variations to any Software or Developed Software which are made available to the Customer under the terms of the Agreement without the prior written consent of the Supplier.
- 6.4. Where the Services or Deliverables include third party goods and/or services, the Customer shall comply with such Additional Terms as required by the third party proprietors of such third party goods and/or services.
- 6.5. The Customer shall not, nor knowingly permit any other person to, use the Services:
- (a) in connection with the carrying out of fraud or other criminal offence;
 - (b) in breach of the Acceptable Use Policy;
 - (c) to send unsolicited advertising or mail shots of any kind in breach of the Privacy and Electronic Communications Regulations (2003) (or any equivalent regulations); or
 - (d) in a way which does not comply with instructions given by the Supplier or its agents or contractors.
- 6.6. Save where the Customer is paying for the Supplier's Online Backup Service, the Customer is responsible for keeping full and up to date secure copies of the computer programs and data it uses in accordance with best computing practice. The Customer is also in the best position to assess the risks associated with potential loss of or corruption to its data and is best placed to obtain any necessary insurance in respect of this. Accordingly, subject to clause 14.5, the Supplier shall not be liable for any loss of or corruption to data caused by any Supplier Breach or any Losses arising out of this.
- 6.7. The Customer accepts that the Supplier has no control over the information transmitted to or from the Services and that the Supplier will not ordinarily examine the use to which the Customer puts the Services or the nature of the information it is sending or receiving and the

Customer agrees that the Supplier is a mere conduit in accordance with the Electronic Commerce (EC Directive) Regulations (2002). The Supplier hereby excludes all liability of any kind for the transmission or reception of information of whatever nature through the Services, subject to clause 14.5.

- 6.8. If the Customer agrees to enter into a Proof of Concept trial of a Service, then the Customer agrees that no service levels apply and the Supplier will not be held liable for the quality of the Service during the period of the Proof of Concept trial. The Supplier reserves the right to cancel all Proof of Concept trials upon immediate notice, without penalty. Upon termination of the Proof of Concept trial all the Supplier's obligations and liabilities in relation to the Proof of Concept trial will cease.

7. FINANCIAL TERMS

- 7.1. The supply of Services is subject to approval by the Supplier of the Customer's financial and credit information.
- 7.2. The Customer shall provide the Supplier with such information and documentation as the Supplier reasonably requests from time to time to enable the Supplier to: (i) carry out its obligations under the Agreement; and/or (ii) assess the Customer's creditworthiness.
- 7.3. The Customer shall be responsible for ensuring that this information and documentation is true, accurate, complete and not misleading in any material respect.

8. FEES AND PAYMENT

- 8.1. In consideration of the provision of the Services by the Supplier the Customer shall pay the Fees to the Supplier.
- 8.2. Except where and to the extent expressly otherwise provided in the Agreement:
- (a) all amounts payable under this Agreement shall be calculated and paid in pounds sterling and paid by direct debit in line with the invoice terms unless otherwise agreed and payment shall not be treated as received until it is received in full, cleared funds;
 - (b) the Supplier shall be entitled to invoice for Additional Charges which shall be charged on a time and materials basis in accordance with the Rates together with the Expenses incurred in respect of them unless a fixed price agreement is reached as detailed in the appropriate SOW. No work which attracts Additional Charges will be undertaken without the prior written consent of the Customer. The Supplier will notify the Customer of any Additional Charges applicable to the Service(s).
- 8.3. All amounts payable under this Agreement are exclusive of Value Added Tax or other similar taxes which either party may be required to make by law. Any applicable Value Added Tax or other similar taxes shall be paid by the Customer (or repaid by the Customer to the Supplier as the case may be) at the rate and in the manner prescribed by law in addition to such amounts.

- 8.4. Professional Services such as consulting time paid for in advance will:
- (a) expire within 6 months from the date of purchase; and
 - (b) will be lost if cancelled within 5 days of the booking.
- 8.5. The Supplier may, giving 30 days' notice, alter the amount of, or payment terms relating to the Fees at any time during the Term for the following reasons:
- (a) to take account of any increase in the costs incurred by the Supplier in the set-up of the Services (including any increase in the costs or charges of any third party supplier or licensor to the Supplier);
 - (b) to pass on any increase in data centre charges imposed by any third party supplier to the Supplier at any time;
 - (c) to pass on any increase in charges imposed by any telecommunications supplier to the Supplier at any time;
 - (d) to reflect an annual price rise of up to a maximum of RPI + 2%; and
 - (e) to pass on any increase in the cost of Third Party Software suppliers to the Supplier at any time.
- 8.6. The Fees are not refundable under any circumstances, except where expressly stated otherwise in the Agreement.
- 8.7. Fees do not include charges for any third party communications services used by the Customer to connect the Customer to the Services unless otherwise stated.
- 8.8. In the event of replacement, upgrading, reconnection or other amendment of Services, the Supplier reserves the right to issue parallel billing to facilitate the transition between the Services.
- 8.9. The Customer shall pay all amounts under any Agreement without set-off, counterclaim or withholding of any kind (except where and to the extent that this cannot by law be excluded). Notwithstanding any other provision of the Agreement, the Supplier shall be entitled to apply any amount received from Customer against any amount due for payment by any entity controlled by, controlling or under common control with such Customer.
- 8.10. If any amount due to the Supplier under the Agreement is not paid when due, then (without prejudice to the Supplier's other rights and remedies) the Supplier may at its sole discretion:
- (a) charge interest on the unpaid amount from the due date up to the actual date of payment (both before and after judgment) at the current rate set at under the Late Payment of Commercial Debts (Interest) Act;

- (b) offset sums owed to the Customer by the Supplier against sums due from the Customer;
 - (c) apply sums received under a different SOW;
 - (d) suspend all Services (or any part of them) under the Agreement with the Customer until such time as payment has been received in full (including any interest payable pursuant to clause 8.9 above); and
 - (e) terminate the Agreement or any part(s) of the Agreement in respect of which the Fees relate.
- 8.11. In addition to the Supplier's other rights and remedies under the Agreement, the Supplier shall be entitled to charge for any under-used resources or additional work required by it as a result of the Customer failing to comply with its obligations under this Agreement. These charges will be calculated in accordance with the Rates together with Expenses. However, the Supplier will use its reasonable efforts to minimise these increased costs and under-used resources.
- 8.12. The Customer may cancel the Services in full prior to any target go live date by providing prior written notice to the Supplier and in such circumstances, the Customer shall pay all unpaid amounts which were payable over the course of the Initial Term of the contract along with any Additional Charges and any third party costs incurred or committed to be incurred prior to the date of notice of termination.
9. CHANGE CONTROL
- 9.1. If either party wishes to make a change to any Deliverables, Software or Services to be provided or the terms on which they are to be supplied, or to any SOW, it shall send a written Change Request to the other party. This Change Request shall set out the proposed change in sufficient detail to enable the receiving party to properly evaluate it. The party requesting the change shall promptly provide such other information in relation to the proposed change as the receiving party reasonably requests.
- 9.2. If sent by the Supplier, the Change Request shall state the effect that it anticipates such a change shall have on the Agreement and the Fees payable by the Customer.
- 9.3. If sent by the Customer, receipt of the Change Request will constitute a request to the Supplier to state the effect that the Supplier anticipates such a change shall have on the Agreement and the Fees payable by the Customer. Where work required to respond to a request or series of requests in any calendar month exceeds 1 Working Day, the Supplier shall be entitled to make a reasonable charge for its response to such requests on a time and materials basis in accordance with the Rates (together with Expenses) whether or not the change is put into effect, where such a change would not normally be covered by the fees.

- 9.4. The parties will then discuss and agree in writing whether or not to implement the change. If the change is to be implemented, the Agreement and all ancillary documentation shall be amended accordingly. No Change Request shall be binding on the parties until it has been agreed by both parties in writing and signed by the Authorised Representative of each party.
- 9.5. Neither party shall be obliged to agree any Change Request submitted by the other party, provided that where the Supplier submits a Change Request which is caused by matters that were not reasonably foreseen by the Supplier at the date on which the terms to which it relates were entered into or as a result of any assumption no longer being correct, the Customer shall not unreasonably withhold, apply conditions or delay its consent to the change.
- 9.6. Notwithstanding this clause 9, the Supplier may, from time to time and without notice, change the Services, provided that such changes do not negatively or materially affect the nature or quality of the Services.
10. CONFIDENTIALITY
- 10.1. Each party shall ensure, in respect of all Confidential Information obtained by or on behalf of it from or relating to the disclosing party, any connected Supplier of the disclosing party, or the disclosing party's employees or agents in connection with the Agreement or their performance, that it:
- (a) does not disclose it to any person except where and to the extent expressly permitted under clause 10.2;
 - (b) maintains it in confidence and takes all reasonable precautions to prevent any unauthorised disclosure or use of it including taking at least the same steps to protect it as it does with its own Confidential Information; and
 - (c) uses it only to perform its obligations or exercise or evaluate its rights under the Agreement.
- 10.2. Each party may disclose such Confidential Information only to those of its officers, employees, agents, sub-contractors and professional advisors who both:
- (a) need to know it to enable the Agreement to be performed or to enable that party to evaluate or enforce its rights or obligations under the Agreement; and
 - (b) are informed of the non-disclosure obligations imposed by this clause 10 and upon whom similar obligations of confidentiality are placed and enforced by that party.
- 10.3. If either party becomes aware of any unauthorised disclosure of the other's Confidential Information, it shall immediately notify the other party and promptly comply with all reasonable requests to prevent further disclosure.

- 10.4. Regardless of anything to the contrary in this clause 10, each party shall be entitled to disclose Confidential Information to the extent that it is obliged to disclose it by law, or by a court, tribunal or competent regulatory body, or recognised stock exchange (in which case the receiving party shall give the party which has disclosed the information notice of the relevant order) and shall be entitled to freely use and disclose its own Confidential Information.
- 10.5. Notwithstanding this clause 10, the Supplier shall be entitled to utilise the Customer's name and logo for the Supplier's marketing and promotional purposes.
- 10.6. For the avoidance of doubt, the provisions of this clause 10 shall survive the termination or expiry of this Agreement for 5 years.

11. DATA PROTECTION

Each party agrees that, in the performance of its respective obligations under the Agreement and each SOW, it shall comply with the provisions of Schedule 2.

12. TERMINATION OF THE AGREEMENT AND ANY SOW

- 12.1. Without prejudice to any other rights or remedies available to it, a party (the "**Complaining Party**") shall have the right to terminate the Agreement and/or any individual SOW by giving written notice to the other party (the "**Defaulting Party**") if the Defaulting Party:
 - (a) commits a material or persistent breach of the Agreement or SOW and (in the case of a breach capable of being remedied) has failed to remedy it within 30 days after receiving written notice of the breach and requiring it to be remedied. For the purposes of this sub-clause (b), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to time of performance;
 - (b) any meeting of creditors of the Defaulting Party is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to the Defaulting Party (other than for the purpose of a bona fide solvent re construction, re-organisation or amalgamation);
 - (c) the Defaulting Party ceases or threatens to cease carrying on business or is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
 - (d) a nominee, supervisor, receiver, administrator, administrative receiver or liquidator is appointed in respect of the Defaulting Party or any encumbrancer takes possession of, or any distress, lien, execution or other process is levied or enforced (and is not discharged within seven days) upon, the assets of the Defaulting Party;

- (e) a petition is presented for the winding-up of the Defaulting Party by any third party and is not withdrawn or dismissed within 14 after presentation or a resolution for its winding up is passed;
 - (f) a notice of intention to appoint an administrator is filed with the court or served on any creditor of the Defaulting Party by any third party who is entitled to serve such notice;
 - (g) an application for an administration order is issued at court and not withdrawn within 7 days; or
 - (h) any event analogous to any of sub-clauses (b) to (g) above occurs in any jurisdiction.
- 12.2. Without affecting any other right or remedy available to it, a party may terminate:
- (a) this Agreement in accordance with clause 2.2; and
 - (b) a SOW in accordance with clause 2.2.
- 12.3. The Supplier shall be entitled to terminate this Agreement immediately on notice in the event that the Customer:
- (a) fails to pay the Supplier any Fees when due and such amounts remain unpaid by the Customer within 7 days after receiving written notice from the Supplier stating that the sums have not been paid and requiring payment; or
 - (b) suffers an event of such damaging publicity that no respectable business would reasonably wish to remain associated with it, or which has the potential to damage the reputation of that associated business.
13. EFFECTS OF TERMINATION
- 13.1. On termination of the Agreement, each SOW then in force at the date of such termination shall continue in full force and effect for the remainder of the term of that SOW unless terminated earlier in accordance with clause 12 or the provisions of such SOW.
- 13.2. The termination of a SOW shall not affect any other SOW or this Agreement.
- 13.3. Except as otherwise provided in the Agreement, on termination of the Agreement or a SOW any accrued rights or liabilities of either party under them shall not be affected. Nor shall it affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 13.4. Further, on termination of the agreement or any SOW:
- (a) the Customer shall immediately pay to the Supplier all outstanding unpaid invoices and any interest payable pursuant to clause 8.10(a) and in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice which shall be payable immediately on receipt;

- (b) the Customer shall promptly return all of the Supplier's Equipment held by the Customer. If the Customer fails to do so, the Supplier shall be entitled (and the Customer grants to the Supplier) an irrevocable licence to enter the Customer's premises to recover and remove any Equipment supplied by the Supplier on account of any sums due to the Supplier under the Agreement;
 - (c) each party shall return (or at the option of the other party destroy and within 21 days confirm compliance with such requirement in writing) all property of the other party relating to the Services concerned (including Confidential Information of the other party) in its possession or control; and
 - (d) the Supplier may, if requested by the Customer, provide the Customer with such assistance as may be agreed in writing by the parties regarding migration to a new software system used by or on behalf of the Customer, subject to the parties first agreeing in writing the Supplier's charges for providing such assistance (which the Supplier may require the Customer to pay upfront in advance).
- 13.5. For the avoidance of doubt, the following provisions shall survive the termination of the Agreement and shall continue in full force and effect: clause 1, clause 8, clause 10, clause 11, clause 13, clause 14, clause 17, clause 18, clause 19, clause 20, clause 21 and clause 23.
14. LIABILITY AND WARRANTY
- 14.1. Subject to clause 14.5, the following provisions of this clause 14 set out the Supplier's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer in contract, tort (including negligence and breach of statutory duty), misrepresentation or otherwise howsoever in respect of all matters arising under or in connection with the Agreement, any SOW or any documents referred to in it (each referred to as a "**Breach**").
- 14.2. The express terms of the Agreement are to the fullest extent permitted by law in lieu of all warranties, conditions, terms, undertakings and other obligations that would otherwise be implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are expressly excluded except for the terms (if any) implied by section 12 of the Sale of Goods Act 1979 or s2 of the Supply of Goods and Services Act 1982.
- 14.3. Subject to clauses 14.4 and 14.5, the Supplier's maximum aggregate liability to the Customer for all Breaches taken together shall not exceed the greater of: (i) £500,000 and (ii) the total Fees payable by the Customer to the Supplier over the preceding 12 months prior to a Breach in aggregate for all claims arising under this Agreement.
- 14.4. Subject to clause 14.5 but regardless of anything else contained in the Agreement or any documents referred to in it, the Supplier shall not be liable for any:

- (a) loss of contracts, goodwill or custom or failure to make anticipated savings (whether direct or indirect);
- (b) loss of revenue or profits (whether direct or indirect);
- (c) loss of or damage to business or reputation;
- (d) loss of or loss of use of any software or data;
- (e) losses resulting from claims or demands made against the customer by third parties (excluding valid claims made by third parties for infringement of Intellectual Property Rights in relation to their rights in Third Party Software); or
- (f) any special, indirect or consequential loss of any kind,

arising out of or in connection with the Agreement whether in contract tort (including negligence and breach of statutory duty), misrepresentation or otherwise howsoever.

14.5. Nothing in the Agreement shall limit the Supplier's liability in respect of:

- (a) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors
- (b) fraud or fraudulent misrepresentation; or
- (c) any liability which cannot be excluded by applicable law.

14.6. Notwithstanding any other provision in the Agreement (but subject to clauses 14.2 and 14.5), the Supplier shall not be liable for any Breach if and to the extent it arises from, is caused by or is attributable to the Customer (including where this relates to the delay or failure of the Customer to comply with its obligations).

14.7. Where Deliverables are supplied by the Supplier which the Supplier has from third parties, the Supplier provides such goods as a reseller. Accordingly, goods are provided with the benefit of the warranties and indemnities provided by the third party manufacturer/supplier, to the extent the same are transferable, and in this regard, the Supplier undertakes to use its reasonable commercial endeavours to transfer the benefit of the same. To the extent permitted by law, the Supplier excludes all other warranties implied or otherwise in respect of such third party goods.

14.8. Each of the parties agrees that where matters are dealt with by the SOW as well as under the Agreement then any lower limits on liability in respect of such matters which are set out in the SOW shall apply to such liability under the Agreement (in addition to the other caps on and exclusions from liability set out above) whether or not they are repeated in the Agreement.

15. FORCE MAJEURE AND DELAYS

- 15.1. Regardless of anything else in the Agreement, the Supplier shall not be liable for any delay in performing, misperformance or failure to perform its obligations under the Agreement to the extent that that delay, misperformance or failure is caused by a Force Majeure Event.
- 15.2. In the event of a Force Majeure Event, the Supplier shall promptly notify the Customer of the reasons for the delay, misperformance or failure and the performance of its obligations shall be suspended during the period that the Force Majeure Event persists and the time for performance shall be extended by an equivalent period.
- 15.3. For the avoidance of doubt the Supplier shall not be liable for any costs, Fees or Losses or non-performance incurred by the Customer as a result of any delay which results (directly or indirectly) from the acts or omissions of the Customer, its agents, subcontractors, consultants, or employees (including the provision of any incorrect or inadequate information or data by the Customer).
- 15.4. If as a result of any matter referred to in clause 15.3, any matter is not completed by the date specified in the Agreement or SOW or is made more difficult or costly to perform then the Customer shall pay to the Supplier the Supplier's reasonable charges (calculated in accordance with the Rates) and expenses in respect of any additional time and materials spent by the Supplier in rectifying such matter or any wasted time incurred by the Supplier as a result of such matter.

16. INTELLECTUAL PROPERTY

- 16.1. The Supplier and its licensors shall retain ownership of all IPRs:
- (a) owned by the Supplier or a third party developed independently of the Agreement or any SOW and which are included in a Deliverable or are necessary or desirable to enable the Customer to receive and use the Services; and
 - (b) in the Deliverables other than as set out in clause 16.2.
- 16.2. The Customer and its licensors shall retain ownership of all IPRs in the Customer's materials developed independently of the Agreement.
- 16.3. Except as expressly set out in the Schedules, nothing in the Agreement or any SOW grants the Customer any rights to, or in, any IPRs or any other rights or licences in respect of the Software, Services or any Deliverables.
- 16.4. The Customer grants the Supplier a fully-paid up, worldwide, royalty-free licence during the Term to use the Customer's IPRs as set out in clause 16.2 and the Customer Equipment for the purpose of providing Services to the Customer.

- 16.5. The Customer shall promptly at the Supplier's request do all further acts and things and execute such documents as the Supplier may require from time to time for the purpose of securing for the Supplier the full benefit of all rights title and interest pursuant to this clause 16.
17. INDEMNITY
- 17.1. The Customer agrees to indemnify the Supplier and keep the Supplier fully and effectively indemnified in respect of any Losses (including reasonable legal fees) which the Supplier may suffer or incur as a result of:
- (a) breach of this Agreement or any SOW by the Customer or its permitted third party users;
 - (b) any action or claim that the Data infringes any IPRs of a third party.
18. NOTICES
- 18.1. Any notice given under the Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it by hand or sending it by pre-paid registered post or (subject to clause 18.2) email to the party due to receive it, at its address or email address set out in the Agreement or to such other address or email address as is last notified in writing to the parties.
- 18.2. Notwithstanding clause 18.1:
- (a) notice of breach or termination of any of the Agreement may not be served by email; and
 - (b) notice by email shall not be treated as validly served unless a copy of the same is sent by hand, pre-paid registered post in accordance with clause 18.1 within 5 Working Days of the sending of the relevant email.
- 18.3. Any notice given under this clause shall be deemed to have been received:
- (a) if delivered by hand, at the time of actual delivery to the other party's address;
 - (b) in the case of registered post, two Working Days after the date of posting;
 - (c) if sent by email, at the time the email was sent unless the party sending the notice by email receives a notification that the email has not been delivered in which case the notice shall be deemed to have been received when the follow-up notice in writing served in accordance with clause 18.2(b) is deemed to have been received.
- 18.4. If receipt under clause 18.3 would otherwise be deemed to occur outside Normal Business Hours, the notice shall be deemed received at 9.00 am on the next Working Day.

- 18.5. In proving service, it shall be sufficient to prove that the envelope containing such notice was correctly addressed and delivered either to that address or to the postal authorities in the required form.
19. NO POACHING
- 19.1. The Customer shall not (without the prior consent of the Supplier) at any time during the period from the Commencement Date to the later date of 12 months after the termination of the Agreement or the last SOW (either directly on its own account or indirectly by any other person): (a) solicit or endeavour to entice away from or discourage from being employed or engaged by the Supplier, or (b) employ or attempt to employ or engage, any person who is, or shall at any time during that period become one of the Supplier's employees or sub-contractors who has had contact with the Customer (directly or indirectly) during the 12 month period prior to such actual or attempted solicitation or employment.
- 19.2. For the avoidance of doubt, nothing in this clause 19 shall prevent the Customer from employing a person who independently responds to an advertisement in a newspaper or other publication or who is proposed independently by a recruitment agency who is carrying out a search on the Customer's instructions for suitable candidates and in both cases the instruction or advert was not directed to that person.
20. RECORDS AND AUDIT
- 20.1. The Customer shall keep accurate and complete records of the installation, copying and use of any software supplied and any payment due to the Supplier under the Agreement for Term and the respective SOW and for 2 years after their termination (such records to include details of the previous 3 years' usage and payments due).
- 20.2. The Customer grants the Supplier the right upon not less than 5 Working Days' notice to enter its premises and any other premises on which the Software is stored with its employees and agents during Normal Business Hours (but not more than twice in any 12 month period unless a discrepancy is discovered) to audit and inspect any computer system on which any software supplied by the Supplier is installed and any records maintained in accordance with clause 20.1 above to verify the Customer's compliance with the terms of the Agreement. The Supplier shall use reasonable endeavours to minimise any disruption caused to the Customer's business.
- 20.3. The Supplier shall bear its own costs of carrying out any audit unless it reveals a breach of the Agreement by the Customer, in which case the Customer shall pay the Supplier the costs incurred by the Supplier in carrying out such audit in addition to the Supplier's other rights and remedies.

21. DISPUTE RESOLUTION

- 21.1. The Supplier and the Customer shall use reasonable endeavours to negotiate in good faith and settle amicably any dispute or difference that may arise out of or relate to this Agreement. If any dispute or difference is not settled through ordinary negotiations by the respective parties' Authorised Representatives within 14 days of the dispute arising, the dispute shall be referred to the Managing Directors of the parties.
- 21.2. Either party may refer any dispute or difference for mediation in accordance with the remainder of this clause 21 at any time after notice of referral to the Managing Directors under clause 21.1 has been served by giving the other party notice in writing requiring the dispute or difference to be submitted to mediation.
- 21.3. If, following the procedure in clause 21.1 any party refers the matter to mediation, the parties agree to do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 Working Days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute, referring the dispute to mediation. Unless otherwise agreed, the mediation will start not later than 28 Working Days after the date of the ADR notice.
- 21.4. In no event shall the provisions of this clause operate to prevent a party from seeking interim relief in respect of any dispute or differences.

22. TUPE

- 22.1 The Customer and the Supplier believe that the commencement and provision of the Services will not constitute a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced from time to time ("TUPE"). Consequently, no employee will transfer to the Supplier on commencement of the Services under the Agreement.

23. GENERAL

- 23.1. Nothing in these Conditions shall render either party a partner or an agent of the other (except as and to the extent that a party is expressly stated to be acting as the agent of the other party) or shall allow either party to purport to undertake any obligation on the other's behalf nor expose the other party to any liability nor pledge or purport to pledge the other party's credit.
- 23.2. The Customer may not assign its rights or obligations under the Agreement or any SOW without the prior written consent of the Supplier. The Supplier may at any time assign its rights or obligations under the Agreement provided it gives written notice of such assignment to Customer.

- 23.3. No failure to exercise and no delay in exercising on the part of either party of any right, power or privilege under the Agreement shall operate as a waiver of it. Nor shall any single or partial exercise of any right, power or privilege preclude the enforcement of any other right, power or privilege. Nor shall the waiver of any breach of a provision be taken or held to be a waiver of the provision itself. For a waiver to be effective it must be made in writing.
- 23.4. Except as and to the extent otherwise specified in the Agreement, the rights and remedies contained in the Agreement are cumulative and are not exclusive of any rights or remedies provided by law or elsewhere in the Agreement. However, no party shall be entitled to recover the same loss twice where it arises out of or in connection with the same facts.
- 23.5. The Agreement incorporating these Conditions, the relevant quote documentation and SOWs together with any Schedules, completed as appropriate, contain the entire agreement between the parties in relation to their subject matter and supersede and cancel all prior representations, agreements, arrangements and understandings relating to their subject matter between the parties, whether written or oral. The parties warrant to each other that they have not relied on any representation in deciding whether to enter into the Agreement other than those expressly incorporated within them. However, nothing in this clause shall limit either party's liability for fraud.
- 23.6. No amendment to the Agreement shall be effective unless it is made in writing and signed by the Authorised Representative of each party.
- 23.7. To the extent that any of these provisions are determined by any competent authority to be invalid, unlawful or unenforceable then that provision will to that extent be severed from the remaining provisions which will continue in full force and effect.
- 23.8. The Agreement is personal to each of the parties and neither party may assign, hold on trust or otherwise transfer, part with or share any of its respective rights or obligations under the Agreement (or purport to do so) without the prior written consent of the other. However, the Supplier shall be entitled to sub-contract its obligations under the Agreement provided that it remains primarily liable to the Customer for the performance of those obligations.
- 23.9. A person who is not a party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 23.10. The Agreement shall be governed by and construed in accordance with English law. Any dispute in connection with the Agreement shall be subject to the exclusive jurisdiction of the English courts.

SCHEDULE 1 – ACCEPTABLE USE POLICY

The Customer acknowledges that the Supplier provides the telecommunications network facilities underlying the Services. The use of the Supplier's telecommunications network facilities is subject to the terms of this Acceptable Use Policy, breach of which by Customer or its Authorised Users shall be considered a material breach of the Agreement meaning that the Supplier may suspend or terminate the Agreement in accordance with clause 12.1(a):-

1. LAWFUL USE

- 1.1. The Supplier's network may only be used for lawful purposes. Transmission or downloading of any material through the Supplier's network, or use of any part of it, in violation of any applicable law or regulation is prohibited. Such prohibited transmission might include, but is not limited to: copyright material, material legally judged to be threatening or obscene, material protected by trade secret, whether or not the Authorised User was aware of the content of the material or of the relevant law.
- 1.2. The Customer acknowledges that, by the nature of the Services being provided, information and material downloaded or used by Customer will be kept, whether permanently or temporarily, on the Supplier Equipment. Customer shall at all times ensure that such information and material complies with the laws of all applicable jurisdictions.

2. SECURITY

- 2.1. The Customer shall be issued with a password to access the Services and shall take all reasonable steps to keep such password private and confidential, and ensure that it does not become known to persons other than Authorised Users. If the password becomes known to any other person, the Customer will immediately inform the Supplier and the password shall immediately be changed.
- 2.2. The Customer is required to protect the security of its Internet account and usage. The Customer's security policies and procedures, their implementation and their connection to the Internet are the Customer's responsibility. Any packet filtering services provided by the Supplier as part of the Services provides a base level of protection and cannot be considered to render comprehensive security of any kind. The Customer is responsible for securing its own enterprise network via its own security policies and procedures.

3. RESTRICTIONS

- 3.1. The Customer shall not use the Services or the Supplier's network:
 - (a) to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful

programs or similar computer code designed to adversely affect the operation of any computer software or hardware;

- (b) for transmission of any material which is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; is fraudulent; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability; is offensive or abusive or of menacing character, or which may cause annoyance, inconvenience or needless anxiety;
- (c) in any manner which adversely affects the use of the network by the Supplier or any other customers of the Supplier;
- (d) for storage or transmission of pornographic materials in any form (and what constitutes “pornographic materials” shall be purely at the discretion of the Supplier);
- (e) must not be used as an internet accessible area for the transmission of demo software and other high bandwidth applications without the prior written consent of the Supplier. If such applications are required on a website, then it is suggested that these are posted on dedicated FTP sites which can be reached by appropriate links on the web sites stored on the Supplier Internet network; and
- (f) to send, transmit or participate in activities such as mass mailings, mass advertisements, pirating or copying of software, mail bombing or other methods of attempting to deny service or access to other users, and attempts to violate security.

4. OTHER POLICIES AND STANDARDS

The Supplier’s network may be used by the Customer to access other networks world-wide and the Customer agrees to conform to any acceptable use policies of the Supplier in relation to the same and any such other networks. In addition, the Customer undertakes to conform to any published Internet protocols and standards. In the event that communications by the Customer do not conform to these standards, or if the Customer makes profligate use other than in accordance with the Agreement of the Supplier network to the detriment of the Supplier or other customers of the Supplier, the Supplier reserves the right to restrict passage of the Customer’s communications until the Customer complies with such standards or protocol or provides undertakings acceptable to the Supplier in respect of the Customer’s future use.

5. INDEMNITY

The Customer shall indemnify the Supplier from and against all Losses which the Supplier may incur in relation to any breach by the Customer of its obligations under this Acceptable Use Policy.

6. CONSEQUENCES OF BREACH

Without prejudice to any other right, the Supplier shall be entitled to disable the Services or any part of it immediately and without notice or to take such action as it may in its discretion think appropriate to ensure that any material which the Supplier in its reasonable opinion considers to offend the principles set out in this Acceptable Use Policy is not capable of being transmitted or downloaded. The Supplier shall not however be obligated to take, or consider whether it should take any such action. The Supplier shall inform the Customer of any such action and the reasons for the same.

7. RIGHTS OF THE SUPPLIER

7.1. The Supplier reserves the right to make reasonable amendments to this Acceptable Use Policy from time to time, effective upon immediate notice to the Customer of such changes.

7.2. The Supplier reserves the right to limit the transfer of data if such transfer of data is deemed to cause high traffic demands by way of download of files whether through the size of file and or the number of Authorised Users of a particular service. The Customer acknowledges its obligation to inform the Supplier of the exact nature of files by size, type, content and understand that a surcharge may be levied for the additional bandwidth required to accommodate the traffic.

8. WARRANTY

The Customer warrants that it has a basic knowledge of the Internet and its operating principles and procedures.

SCHEDULE 2 – DATA PROTECTION

1. DEFINITIONS

In this Schedule:

“Applicable Law” means as applicable and binding on the Customer, the Supplier and/or the Services:

- (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of;
- (b) the common law and laws of equity as applicable to the parties from time to time;
- (c) any binding court order, judgment or decree; or
- (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party’s assets, resources or business;

“Controller” has the meaning given in applicable Data Protection Laws from time to time;

“Data Protection Laws” means, as binding on either party or the Services:

- (a) the Data Protection Act 2018 or the GDPR;
- (b) any laws which implement any such laws; and
- (c) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

“Data Protection Losses” means all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
- (b) to the extent permitted by Applicable Law:
 - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority; and
 - (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject;

“Data Subject” has the meaning given in applicable Data Protection Laws from time to time;

“Data Subject Request” means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;

“**GDPR**” means the General Data Protection Regulation (EU) 2016/679;

“**International Organisation**” has the meaning in the GDPR;

“**Personal Data**” has the meaning given in applicable Data Protection Laws from time to time;

“**Personal Data Breach**” has the meaning given in the GDPR;

“**Processing**” has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process, processed, processing, and processes shall be construed accordingly);

“**Processor**” has the meaning given in applicable Data Protection Laws from time to time;

“**Protected Data**” means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier’s obligations under the Agreement;

“**Sub-Processor**” means any agent, subcontractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data; and

“**Supervisory Authority**” means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

2. DATA PROCESSOR AND DATA CONTROLLER

The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Agreement.

3. CUSTOMER’S COMPLIANCE WITH DATA PROTECTION LAWS

- 3.1. The Customer shall at all times comply with all Data Protection Laws in connection with the collection of and processing of Protected Data, the Services, the exercise of its rights and the performance of its obligations under the Agreement.
- 3.2. The Customer shall ensure all instructions given to the Supplier in respect of Protected Data (including the terms of the Agreement) shall at all times be in accordance with Data Protection Laws.
- 3.3. In agreeing to allow the Supplier to process Personal Data, whether within the Customer’s business or to other persons whose details the Customer provides to the Supplier, the Customer confirms in each instance (as the Controller of that Personal Data) that:
 - (a) in respect of Personal Data belonging to the Customer’s officers and employees, it has provisions within officer and employee service agreements or employment policies within its business, which are compliant with the Data Protection Laws, and which authorise the Customer to:

- (i) provide such Personal Data to the Supplier for the purposes of transacting business with the Customer (including the Supplier communicating with those persons);
 - (ii) authorise the Supplier to access information containing Personal Data from third parties for the purposes of doing business with the Customer;
- (b) in respect of Personal Data belonging to the Customer's supplier and customers, it has enforceable provisions within its contracts and terms of business in place with its suppliers/customers, which are compliant with the Data Protection Laws, and which confirm that:
 - (i) the Customer and the Supplier are authorised to receive from the Customer's suppliers/customers, whether directly or indirectly through the Customer, and through third party providers, information, including Personal Data of individuals within the Customer's suppliers' and customers' organisations for the purposes of doing business with them;
 - (ii) Personal Data provided by the Customer's suppliers/customers to the Customer has been provided in accordance with and is compliant with the Data Protection Laws for that purpose;
 - (iii) that Personal Data accessed by the Supplier in relation to the Customer's suppliers/customers through third parties has been provided for use by those third parties in accordance with and is compliant with the Data Protection Laws for that purpose; and
 - (iv) the Customer is authorised to provide that information and Personal Data to the Supplier; and
 - (v) all such Data Subjects have actively consented to their Personal Data being held and processed by the Supplier for the purposes of the Supplier contracting and communicating with the Customer.

3.4. The Customer warrants, represents and undertakes that:

- (a) all Personal Data sourced by the Customer for use in connection with the Services shall comply in all respects, including the terms of its collection, storage and processing, with Data Protection Laws;
- (b) all instructions given by it to the Supplier in respect of Personal Data shall at all times be in accordance with Data Protection Laws; and
- (c) it is satisfied that the Supplier has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of the Data Protection Laws.

- 3.5. The Customer shall not withhold, delay or apply any conditions to its agreement to any change requested by the Supplier in order to ensure the Services and the Supplier can comply with Data Protection Laws.
- 3.6. The Supplier may, in accordance with its audit process, require the Customer from time to time to provide evidence of its compliance with the terms of this Schedule.

4. THE SUPPLIER'S COMPLIANCE WITH DATA PROTECTION LAWS

4.1 Insofar as the Supplier processes Protected Data on behalf of the Customer the Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Agreement.

4.2 The scope, nature and purpose of Processing by the Supplier shall be as follows:

(i) Scope of the processing: the processing of Personal Data on behalf of the Customer in connection with the Supplier providing the managed IT services and ancillary services pursuant to the Agreement;

(ii) Nature of the processing: any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means);

(iii) Purpose: for the purposes of the Supplier providing the Services pursuant to the Agreement

(iv) Duration of the Processing: for the duration of the Agreement;

(v) Types of Personal Data: name, username, email address, address, telephone numbers employer/company, end user data including passwords. Any additional types of data will be clarified and recorded as part of the parties' discussions relating to the services being provided, where necessary.

(vi) Categories of Data Subject: the Customer's officers, employees, customers and suppliers.

4.3 The Supplier confirms that, when it is dealing with the Customer's Personal Data it will:

- (a) comply with the GDPR as a Processor;
- (b) have appropriate security measures to prevent personal information from being accidentally lost, or used or accessed unlawfully;
- (c) limit access to that Personal Data to those who have a genuine business need to access it;
- (d) only process that Personal Data for the purpose, and for the period strictly required in its transactions with the Customer and that it will review and cleanse such Personal Data as per our Data Retention Policy;
- (e) only act on the written instructions of the Customer as Controller (unless required by law to act without such instructions);
- (f) ensure that people processing the Personal Data are subject to a duty of confidence and have received appropriate training;
- (g) take appropriate measures to ensure the security of processing;
- (h) ensure that if a sub-processor is employed under the Customer's prior general written authorisation, it will advise the Supplier if any changes are made and provide the Supplier with an opportunity to object to those changes;
- (i) assist the Customer at the Customer's cost in providing subject access and allowing Data Subjects to exercise their rights under the GDPR;
- (j) provide reasonable assistance to the Customer at the Customer's cost in meeting its GDPR obligations in relation to the security of processing, the notification of Personal Data breaches and data protection impact assessments;
- (k) delete or return all Personal Data to the Customer as requested at the end of the contract, except to the extent that the Supplier is required to retain such Personal Data by Applicable Law; and
- (l) submit to audits and inspections, provide the Customer with whatever reasonable information it needs to ensure that both parties are meeting their Article 28 obligations, and tell the Customer immediately if it is asked to do something infringing the GDPR or other Data Protection Law of the EU or a member state. No such audits or inspections to be more than once per annum and if found to be excessive will be at the cost of the Customer.

5. INDEMNITY

The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation payable to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Supervisory Authority) arising out of or in connection with:

- (a) non-compliance by the Customer with the Data Protection Laws
- (b) processing carried out by the Supplier or any Sub-Processor pursuant to any instructions for processing given by the Customer that infringes any Data Protection Law; or
- (c) any breach by the Customer of its obligations under this Schedule.

6. LIABILITY

To the extent permitted by Applicable Law (including Data Protection Laws), the Supplier shall not be liable for Data Protection Losses under or in connection with the Agreement to the extent that such Data Protection Losses are directly or indirectly contributed to or caused by any breach of the Agreement by the Customer.

7. ASSISTANCE

The Supplier shall refer all Data Subject Requests it receives to the Customer, provided that the Customer shall pay the Supplier's Charges calculated on a time and materials basis for recording and referring the Data Subject Requests in accordance with this paragraph.

8. SUB-PROCESSING

8.1 In the usual course of business and to deliver the specific IT Managed services requested by a customer, it may be necessary for the Supplier to provide its business partners/suppliers with customer personal data such as, but not limited to, employee names and email addresses.

8.2 If the Supplier engages a third-party Processor to Process the Customer's Personal Data, the Processor will be subject to binding contractual obligations to:

- (a) only Process the Personal Data in accordance with the Supplier's prior written instructions;
- (b) strictly process the data in order to perform the contract agreed upon; and
- (c) use measures to protect the confidentiality and security of the Personal Data; together with any additional requirements under applicable law.

8.3 This transfer of data is acknowledged by the Customer as acceptable to it for GDPR compliance purposes and agreement with these Terms and Conditions constitutes a general agreement between the parties to undertake this sub-processing. Details of the Supplier's main business partners/suppliers can be found on the Supplier's website.



SCHEDULE 3 – SOFTWARE LICENCE

Where, pursuant to the Agreement or a SOW, the Customer requests or requires a software licence to be provided by the Supplier and the Supplier is willing to provide a Software Licence to the Customer, the terms of this Schedule shall also apply. The terms of this Schedule do not apply to Developed Software, which is licensed to the Customer on the Professional Services Terms.

AGREED TERMS:

1. INTERPRETATION

The following definitions and rules of interpretation apply to the grant of a Software Licence by the Supplier and all capitalised terms used but not defined below shall have the meanings set out elsewhere in the Agreement:

"Concurrent Users" means the total number of Users running or accessing the Software at any one time;

"Effective Date" means the date on which the Software Licence is to take effect as set out in the SOW and if no date is specified it shall be the date of delivery of the Software;

"Escrow" means the deposit with, and retention by the Escrow Agent of, the Source Code Materials;

"Escrow Agent" means the escrow agent appointed by Supplier and identified to the Customer in writing;

"Escrow Agreement" means an escrow agreement in the form of the standard single user escrow terms published by the Escrow Agent from time to time which may be entered into by the parties and the Escrow Agent pursuant to these Software Licence Terms;

"Incorporated Software" means any software proprietary to third parties incorporated into the Software and supplied as part of the Software;

"Maintenance Release" means a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;

"Media" means the media (if any) on which the Software and Software Documentation are recorded or printed as provided to the Customer by the Supplier;

"New Version" any new version of the Software which from time to time is offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to constitute a new product;

"Permitted Purposes" means those purposes listed in the SOW, but if no purposes are listed it shall mean the receipt by the Customer of 'new business applications' for its own internal business purposes (but which shall not include the development, distribution or licensing of Software);

"Platform" in respect of each item of Software is as set out in the SOW;

"Software" means the software described in the SOW in object code format only. It excludes any modifications, alterations or additions to them supplied pursuant to the Professional Services Terms as these modifications, alterations or additions will be licensed to the Customer under the Professional Services Terms (though the underlying standard software that is subject to these modifications, alterations or additions will continue to form part of the Software). Software also includes the Incorporated Software but does not include any Third Party Software;

"Software Documentation" means the standard printed and electronic manuals supplied by the Supplier to the Customer which describe the functionality of the Software, including all user manuals that may be issued by the Supplier from time to time for use in connection with the Software, but shall not include any advertising or other promotional material in respect of the Software;

"Software Specific Restrictions" means restrictions which apply to the Software Licence which are specific to a piece of Software, as set out in a SOW;

"Source Code Materials" means the computer programming code in the Software in human readable form and all technical information and documentation required to enable a competent team of appropriately qualified and skilled programmers to understand, operate, correct and modify the Software concerned;

"Territory" means the territory in which the Software Licence is granted as set out in a SOW;

"Third Party Software" means the software programs proprietary to third parties, listed in the SOW under that title, which are to be provided to the Customer by the Supplier pursuant to these Software Licence Terms;

"User" means any individual or system who or which has access to the Software; and

"Work Station" means any computer or other similar equipment at which a single operator works.

2. DELIVERY CONFIGURATION INSTALLATION AND TESTING

- 2.1. The Supplier shall deliver one copy of the Software and any Third Party Software to the Customer at the Location but shall not be responsible for carrying out any configuration, installation or testing of it pursuant to the Professional Services Terms unless expressly otherwise provided for in the relevant SOW. The Software shall be deemed accepted by the Customer on delivery.
- 2.2. The Customer shall promptly configure and install the Software and Third Party Software (or procure such services from the Supplier subject to the Professional Services Terms). If the Customer experiences difficulty in configuring, installing or using the Software it shall inform the Supplier of this promptly.

- 2.3. Risk in the Media shall pass to the Customer on delivery to the Location. If any part of the Media is lost, destroyed or damaged after delivery, the Supplier shall replace it at the Customer's request provided that the Customer shall pay the reasonable cost of this replacement.
- 2.4. Risk in any media on which the Third Party Software is supplied shall pass to the Customer when it is shipped from the third party provider concerned. If such media is subsequently lost or damaged the Supplier will use reasonable endeavours to obtain a replacement from the third party provider concerned at the reasonable cost of the Customer.
- 2.5. The Software and Third Party Software may be subject to export control regulations, including those of England and the USA, which may apply not just to the initial export but also to any re-export of the Software. For the avoidance of doubt, the Customer acknowledges that electronic transfer of the Software and Third Party Software can constitute export as well as any physical shipping of data media and the import and use of the Software in the country of destination may also be restricted or banned by national law of that country. The Customer shall comply with all relevant export and import regulations affecting the Software and Third Party Software and shall indemnify Supplier and its licensors against all losses, liabilities, costs, claims and expenses arising out of non-compliance with these regulations.

3. GRANT OF LICENCE

- 3.1. In consideration of the Fees, the Supplier grants the Customer a non-exclusive, non-transferable licence to install and use the Software in the Territory solely for the Permitted Purposes upon and subject to the Software Licence Terms and any Software Specific Restrictions set out in the SOW (the "**Software Licence**"). Where the Software includes Incorporated Software, the Customer shall comply with any Additional Terms that the Supplier is required by the proprietor of the Incorporated Software to impose on its sub-licensees, copies of which shall be provided by the Supplier to the Customer on request.
- 3.2. The Supplier grants the Customer a non-exclusive, non-transferable licence to use the Software Documentation in the Territory solely for the purpose of using and understanding the Software subject to these Software Licence Terms.
- 3.3. The Customer may not use the Software other than as specified in paragraph 3.1 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier. For the avoidance of doubt if the SOW includes more than one type of restriction, the Software Licence is subject to all of the restrictions specified taken together.
- 3.4. The Customer may make such back-up copies of the Software and Software Documentation as are reasonably necessary under the SOW provided that they are labelled with notice of the Supplier's (or its licensors) ownership of copyright and other applicable Intellectual Property Rights in the Software and/or Software Documentation and the fact that they are back-up

copies. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.

- 3.5. Where and to the extent that the Customer outsources information technology provision the Customer shall be entitled to licence its outsourcing contractors to install and use the Software on the Customer's behalf solely for the purpose of enabling the Customer to use the Software in accordance with these Software Licence Terms. Where the Customer does so, then (except where the Supplier is the contractor concerned) the Customer shall be responsible to the Supplier for all of such contractors' acts and omissions as if they were the acts and omissions of the Customer.
- 3.6. To the extent that the law in the Customer's jurisdiction grants the Customer the right to decompile the Software to obtain information necessary to render the Software interoperable with other computer programs used by the Customer, the Supplier agrees to make that information available to the Customer provided that:
 - (a) the Supplier shall be entitled to impose reasonable conditions including a reasonable fee for doing so; and
 - (b) the Customer provides the Supplier with sufficient details of the Customer's objectives and the other software concerned.
- 3.7. The Software may be supplied by the Supplier together with certain other modules and/or applications that the Supplier has not granted the Customer a licence to use but which are present on the Media or as part of the overall package which is installed on the Customer Equipment because it forms part of the Supplier's standard software suite and cannot be easily separated out from the Software. The Customer agrees that it will not attempt to access or use any such modules and/or applications to which it has not been granted a licence to use. Nor will it seek to activate or enable any modules and/or applications carrying release mechanisms or requiring activation without the Supplier's prior written consent.
- 3.8. The Customer shall provide the Supplier with reports of its usage, the frequency of which will be detailed in the relevant SOW, if applicable to the services that have been agreed with the Supplier.

4. THIRD PARTY SOFTWARE

- 4.1. The Supplier shall provide the Third Party Software to the Customer upon and subject to the licence terms provided by the third party owners of the Intellectual Property Rights in such Third Party Software ("**Third Party Additional Terms**"), copies of which shall be provided to the Customer on request. The Customer agrees to be bound by and comply with such licence terms and to execute such standard third party licence terms as the relevant Third Party

Software owner may require the Supplier to impose on the Customer in respect of such Third Party Software.

- 4.2. The Customer shall indemnify and hold the Supplier harmless against any loss or damage which it may incur as a result of the Customer's breach of any Third Party Additional Terms howsoever arising.
- 4.3. The Supplier may treat the Customer's breach of any Third Party Additional Terms as a breach of this Software Licence.

5. GRANT OF SUB-LICENCE

- 5.1. Where the SOW permits use by Authorised Users of the whole or any part of the Software, the Software Licence shall include a right for the Customer to sub-licence that part of the Software specified under these Software Licence Terms to such Authorised Users on the terms of this paragraph. The sub-licence shall:
 - (a) permit the Authorised User to use the relevant part of the Software on behalf of the Customer solely for those of the Authorised User's internal business purposes that fall within the Permitted Purposes and then only in order to promote, evaluate, obtain, and/or request those of the Customer's financial services products that are offered within the Territory and not further or otherwise;
 - (b) give the Supplier a right to directly enforce the terms of the sub-licence itself without the consent of the Customer, including the ability to directly enforce any restrictions imposed on the Authorised User;
 - (c) not extend to the downloading of any part of the Software except as and to the extent strictly necessary (if at all) in the course of its access and use of the Software in accordance with paragraph 5.1(a); and
 - (d) be subject to any additional restrictions specified for Authorised Users in the SOW.
- 5.2. Any sub-licenses granted under paragraph 5.1 shall automatically end immediately when the sub-licensee concerned ceases to be an Authorised User.
- 5.3. Where the Customer is entitled to grant sub-licences under the SOW, it shall ensure that:
 - (a) the sub-licences shall include restrictions on use and other obligations at least as restrictive as those imposed on the Customer in relation to the Software under these Software Licence Terms and shall not include a right for sub-licensees to grant further sub-licences;
 - (b) the sub-licences shall terminate automatically on termination of the Software Licence granted pursuant to the SOW and these Software Licence Terms as well as for material breach of their terms;

- (c) the total number and/or amount and/or type of equipment, remote equipment, Concurrent Users and Work Stations on which the Software is installed and used does not exceed that provided for in the SOW when aggregated for the Software Licence and all sub-licences granted under it;
 - (d) the sub-licences shall not make or purport to make any warranties, representations, indemnities or other obligations by or on behalf of Supplier and shall contain liability exclusions and limits at least as protective as those set out in these Software Licence Terms; and
 - (e) it uses all reasonable endeavours to enforce the terms of each sub-licence (including where appropriate terminating the sub-licence).
- 5.4. The Customer shall inform the Supplier as soon as it becomes aware of any breach or alleged breach of its sub-licence terms and take such steps as Supplier may reasonably require to bring such sub-licence to an end and prevent any repeat or continuation of it.
- 5.5. The Customer is not permitted to grant sub-licences of the Software except as to and to the extent expressly permitted under this paragraph 5.
6. LICENCE RESTRICTIONS
- 6.1. The Customer shall not and will ensure that its Authorised Users of the Software (if any) do not:
- (a) use or access the Software or Software Documentation outside the Territory. However, where the Customer is permitted to install the Software on or permit it to be accessed via the internet, this shall not prevent the Customer from enabling the Software to be accessed from the internet in accordance with these Software Licence Terms provided that the website in relation to which the Software is used is only targeted at customers within the Territory and that all servers on which it is hosted are physically located in the Territory;
 - (b) copy any part or all of the Software or Software Documentation except as and to the extent:
 - (i) permitted under paragraph 3.4;
 - (ii) expressly required to be permitted by law; and
 - (iii) that transitional copies are necessarily created in the course of running and using the Software in accordance with these Software Licence Terms;
 - (c) sub-license, assign or novate the benefit or burden of the Software Licence in whole or in part;
 - (d) allow the Software to become the subject of any charge, lien or encumbrance;
 - (e) deal in any other manner with any or all of its rights and obligations under the Agreement;

- (f) alter, adapt, merge, modify, translate, reverse engineer, disassemble or decompile the Software in any way or for any purpose, including for error correction except as and to the extent expressly required to be permitted by law;
- (g) remove, change or obscure any Software or Software Documentation identification or notice of proprietary rights and restrictions on or in relation to the Software and Software Documentation;
- (h) incorporate any part or all of the Software or Software Documentation, or knowingly allow it to be incorporated, into any other product or documentation other than strictly as and to the extent contemplated by and for the purposes of properly using the Software in accordance with these Software Licence Terms without the express prior written consent of Supplier;
- (i) use any part of the Software or Software Documentation associated with the delivery of final web pages including the script and/or other executable components other than as contemplated under these Software Licence Terms; or
- (j) load, use or sub-licence or otherwise make available any or all of the Software or Software Documentation otherwise than as expressly permitted under these Software Licence Terms;

without the prior written consent of the supplier.

- 6.2. The Customer shall, and shall ensure that its Authorised Users and other permitted users of the Software (if any):
- (a) ensure that the Software is installed on designated equipment only;
 - (b) keep a complete and accurate record of the copying and disclosure of the Software and its Authorised Users, and produce such record to the Supplier on request from time to time;
 - (c) notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person;
 - (d) permit the Supplier to inspect and have access to any premises (and the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this Software Licence, for the purposes of ensuring that the Customer is complying with these Software Licence Terms, provided that the Supplier provides reasonable notice to the Customer of such inspections;
 - (e) observe and comply with the Software Specific Restrictions; and
 - (f) use the Software only for the Permitted Purposes.

6.3. The Customer shall not use the Software to provide bureau services or to act as an applications service provider or as a supplier of 'software as a service' or 'cloud computing' or as a 'web portal' to third parties in respect of the Software. The Customer is not entitled to (and shall not) enable the Software to be accessed via the internet save solely for use by its Authorised Users for their internal business purposes that fall within the Permitted Purposes.

7. ESCROW

7.1. Where escrow is specified in the SOW as applicable to an item of Software then:

- (a) The Supplier and the Customer shall each execute an Escrow Agreement in respect of the Software (excluding any Incorporated Software and also excluding for the avoidance of doubt any and Third Party Software) promptly following execution of the SOW. The parties shall use reasonable endeavours to procure that the Escrow Agent also executes the Escrow Agreement;
- (b) the Customer shall be responsible for any fees payable to the Escrow Agent in relation to the Escrow Agreement (and shall pay them promptly on demand);
- (c) the Customer agrees to reimburse the Supplier for the Supplier's reasonable costs (charged at the Rates) and Expenses in connection with Supplier preparing and putting the Source Code Materials into Escrow subject to a cap of £5,000 (exc. VAT).

8. FEES

Without prejudice to any other rights and remedies available to Supplier, if usage of the Software exceeds that stated in the SOW, additional licence and maintenance fees calculated in accordance with Supplier's then current list prices shall be due and payable by the Customer. Such additional licence and maintenance fees shall be calculated for the period from the Effective Date up to and including the date that such excess usage is notified to the Supplier unless the Customer demonstrates to the Supplier's reasonable satisfaction that such excess use started after that date (when they will be due from the date that the excess usage started).

9. TERM AND TERMINATION

9.1. The Software Licences granted pursuant to these Software Licence Terms (and any licence to use any Third Party Software supplied under these Software Licence Terms) shall automatically terminate immediately on termination of the relevant SOW or on termination of the provision of any Service in respect of which the Software was provided.

9.2. If the relevant SOW is terminated prior to the expiration of the Initial Term, the Customer shall be liable to pay to the Supplier all Fees that would have been due to the Supplier if the SOW had remained in force for the remainder of the Initial Term.

9.3. Without prejudice to the parties' other rights, upon termination of the SOW or the Agreement the Customer shall and shall procure that any Authorised Users and persons authorised under paragraph 5 (other than the Supplier) shall:

- (a) immediately cease all use of the Software and Software Documentation;
- (b) immediately either destroy or deliver up to the Supplier, at the Supplier's discretion, the Software and Software Documentation and all copies of material (in whatever form) incorporating any part of the Software and Software Documentation;
- (c) make immediate full payment to the Supplier in respect of any and all sums payable to the Supplier (whether or not due for payment prior to termination); and
- (d) comply with any reasonable additional instructions that the Supplier may give from time to time in respect of the removal of the Software and Software Documentation.

10. WARRANTIES

10.1. The Supplier warrants that (subject to paragraphs 10.5 to 10.7 inclusive) for a period of 90 days from the date of delivery the Software will provide the facilities and functions described in the SOW in all material respects when properly used on a Platform. The Supplier does not warrant that the operation of the Software and Software Documentation will be uninterrupted or error-free.

10.2. The Supplier warrants that, on delivery, the Media will be free from material defects in workmanship and materials.

10.3. The Supplier warrants that it shall take reasonable steps to ensure that all Software and Third Party Software supplied by it is virus checked with an up-to-date virus checking software program. However, the Supplier does not (nor can it) warrant that the Software will be virus free. The Customer acknowledges that it is the Customer's responsibility to check the Software and Third Party Software for viruses and other electronic contaminants before it is installed on the Customer's systems (unless Supplier carries out such installation).

10.4. Subject to paragraph 10.5, the Supplier's sole obligations and the Customer's exclusive remedies for breach of the warranties set out in paragraphs 10.1 to 10.3 shall be limited to:

- (a) the Supplier using reasonable endeavours to rectify any non-conformance with the warranties by repair (whether by patch, work around, correction or otherwise) or at the Supplier's option replacement of the Software and Software Documentation or defective Software and Software Documentation media in whole or in part; or
- (b) a refund of the Fees paid for the Software concerned if in the opinion of the Supplier, the Supplier is unable to rectify such non-conformance within a reasonable timescale or at

an economic cost, at which point the SOW shall terminate in respect of the Software concerned.

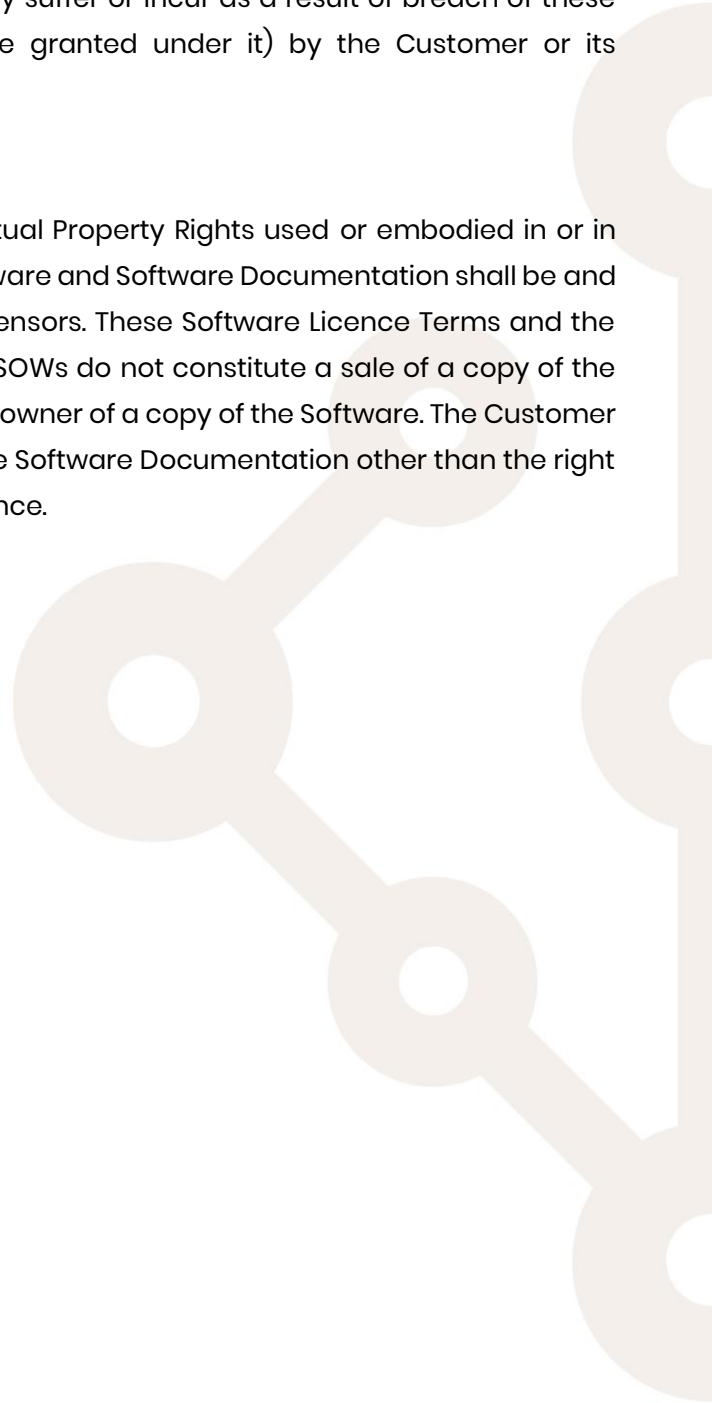
- 10.5. The warranties in this paragraph 10 shall only apply where the Software and Software Documentation is installed and used in accordance with the SOW and these Software Licence Terms, with the requirements of the Platform and in accordance with all Software Documentation. The Supplier shall not have any liability under the warranty in paragraph 10.1 for matters that are not notified to Supplier within the 90 day period specified in that warranty.
- 10.6. Without prejudice to the generality of paragraph 10.5, the Supplier shall not be liable for any defect in or failure of the Software and Software Documentation and the warranties shall not apply in respect of defects or failures to the extent that they are attributable to:
 - (a) any modification of the Software by persons other than the Supplier;
 - (b) defects or failures in hardware, operating systems or other software or data with which the Software operates or their incorrect configuration;
 - (c) defects or failures resulting from the incorrect installation of the Software except where the Supplier is providing installation and such defects or failures are solely and directly caused by the Supplier; or
 - (d) defects or failures due to operator error or Force Majeure Events.
- 10.7. The Customer acknowledges that the Software, Third Party Software and Software Documentation has not been developed to meet the Customer's individual requirements. The Customer accepts responsibility for the selection of the Software to ensure that the Software and Software Documentation is suitable for the Customer's needs, compatible with the Customer's or its Authorised User's hardware and operating systems and other applications and compliant with the Customer's regulatory or legislative obligations.
11. CUSTOMER'S ADDITIONAL OBLIGATIONS
 - 11.1. The Customer shall take all reasonable security steps to prevent the unauthorised use of the Software including complying with the Supplier's reasonable proposals in respect of security from time to time where a security issue has been identified.
 - 11.2. The Customer shall take all reasonable steps to maintain back-up policies, restart procedures, disaster recovery systems, equipment and procedures, checks for the accuracy and security of data and other controls on the use of its software and data as are reasonable in accordance with good information technology industry practise in England.
 - 11.3. The Customer agrees to use (and procure that its Authorised Users and other permitted sub-licensees use) the Software and Software Documentation only in a lawful manner and to act

in accordance with all relevant legislation and regulations that may be in force from time to time in respect of it.

- 11.4. The Customer agrees to indemnify the Supplier and keep the Supplier fully and effectively indemnified on demand in respect of any loss, cost, claim, expense or liability (including reasonable legal fees) which the Supplier may suffer or incur as a result of breach of these Software Licence Terms (or any sub-licence granted under it) by the Customer or its Authorised Users.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. The Customer acknowledges that all Intellectual Property Rights used or embodied in or in connection with the Software, Third Party Software and Software Documentation shall be and remain the sole property of Supplier, or its licensors. These Software Licence Terms and the licences granted pursuant to corresponding SOWs do not constitute a sale of a copy of the Software and do not render the Customer the owner of a copy of the Software. The Customer shall have no rights in or to the Software or the Software Documentation other than the right to use it in accordance with the Software Licence.



SCHEDULE 4 - CLOUD TERMS

Where, pursuant to the Agreement or a SOW, the Customer requests or requires cloud services as described below ("Cloud Services") to be provided by the Supplier and the Supplier is willing to provide Cloud Services to the Customer, the terms of this Schedule shall also apply:

AGREED TERMS:

1. INTERPRETATION

The following definitions and rules of interpretation apply to the provision of Cloud Services and all capitalized terms used but not defined below shall have the meanings set out elsewhere in the Agreement:

"**Backup**" means the copying of data into an archive file stored separately from the original so it may be used to restore the original;

"**Cloud Documentation**" means the standard manuals supplied by the Supplier to the Customer which describe and give instructions for use of the Cloud Services;

"**Cloud Platform**" means all hardware and software used by the Supplier to provide the Cloud Services;

"**Cloud Services**" means any of the Online Backup Services, IaaS Service, DR Service or other cloud-based services offered by the Supplier to the Customer from time to time;

"**Data**" means any programs, Customer and/or end user data or other information copied, or to be copied from a Device during Backup or in provision of the Cloud Services;

"**Data Centre**" means the site at which the Data and associated Backups will be stored by the Supplier;

"**Device**" means any PC, desktop, laptop, server or device to be backed up;

"**DR Service**" the hosted disaster recovery solution, pursuant to which the Supplier deploys and manages the applications and services required to support the Customer's mission critical activities;

"**Effective Date**" means the date on which these Cloud Terms are to take effect as set out in the Agreement and if no date is specified it shall be the date of signing of the Agreement;

"**Online Backup Service**" means the on-line managed Backup and Data storage and hosting service provided by the Supplier;

"Planned Maintenance" means a temporary suspension of the Cloud Services where the date, time and duration have been notified to the Customer in advance;

"Security Credentials" means the security features and procedures that will give the Customer access to its Data on the Cloud Platform; and

"Unscheduled or Emergency Maintenance" means all repairs, upgrades, maintenance or tests involving the Data Centre which are not scheduled or which the Customer has not been given prior notice of.

2. PROVISION OF CLOUD SERVICES

- 2.1. Subject to payment by the Customer of the Fees set out in the SOW and the other terms of the Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to use and to permit the Authorised Users to use such of the Cloud Services identified in the SOW during the term of the SOW solely for the Customer's business operations.
- 2.2. Where any Software is required to access the Cloud Services, such Software will be supplied to the Customer on the Software Licence Terms.
- 2.3. The Supplier shall use commercially reasonable endeavours to make the Cloud Services available 24 hours a day, seven days a week, except for:
 - (a) Planned Maintenance carried out wherever possible outside Normal Business Hours; and
 - (b) Unscheduled or Emergency Maintenance.
- 2.4. If providing the Online Backup Service pursuant to a SOW, the Supplier shall protect all Data by daily Backups to the Supplier's Data Centre for the purposes of safe and secure storage of such Data.

3. CUSTOMER OBLIGATIONS

- 3.1. The Customer shall:
 - (a) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
 - (b) ensure that any Cloud Documentation and Security Credentials are stored in a secure environment and prevent any unauthorised access to or use of them;
 - (c) be solely responsible for procuring, ensuring and maintaining its network connections and telecommunications links from its systems to the Supplier's Data Centres, 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, unless such responsibility for connectivity has been agreed to lie with the supplier and/or its sub-supplier/contractors/agents as set out in the agreement;

- (d) in relation to the Online Backup Service, only use the supplied Software for such service which it shall maintain in a fully operative condition having either been installed by the supplier or by the customer in accordance with the installation documentation;
 - (e) obtain and maintain all necessary licenses, consents and permissions necessary for the supplier, its contractors and agents to perform their obligations under this agreement;
 - (f) ensure that its network and systems comply with the relevant specifications provided by the supplier from time to time;
 - (g) ensure that any equipment connected to or used with the Cloud Services is connected and used in accordance with any applicable instructions, safety and security procedures; and
 - (h) acknowledge and agrees that the Supplier will be unable to provide restoration of any Data where the Customer has lost any encryption keys or other security credentials and the Supplier will have no liability to the Customer in such circumstances.
- 3.2. The Customer undertakes, in relation to Authorised Users, that:
- (a) the Authorised Users will comply with the terms of this Agreement and the Customer shall be liable for any failure by the Authorised Users to do so.
 - (b) the maximum number of Authorised Users that it authorises to access and use the Cloud Services and the Cloud Documentation shall not exceed the number set out in the SOW without the prior written consent of the Supplier;
 - (c) each Authorised User shall keep a secure password for his use of the Cloud Services and Cloud Documentation, that such password shall be changed frequently and that each Authorised User shall keep his password confidential;
 - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Working Days of the Supplier's written request;
 - (e) it shall permit the Supplier to audit the Cloud Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice.
- 3.3. The Customer shall not use the Cloud Services:
- (a) in any way that interrupts or interferes with other users of the Cloud Services;
 - (b) to build a product or services which competes with the Cloud Services and/or the Cloud Documentation.
- 3.4. The Customer shall not:
- (a) licence, sell, rent, lease, transfer, assign, distribute, display, duplicate, create derivative works from, frame, mirror, republish, copy, modify, transmit, disclose, or otherwise commercially exploit, or otherwise make the Cloud Services, and/or Cloud Documentation available to any third party except the Authorised Users; or
 - (b) attempt to obtain, or assist third parties in obtaining, access to the Cloud Services and/or Cloud Documentation other than as permitted under the terms of the Agreement.
- 3.5. Any breach of this paragraph 3 shall be considered a material breach of the Agreement.

4. TERM AND TERMINATION

- 4.1. The rights granted pursuant to the relevant SOW and these Cloud Terms (including access to the Cloud Services) shall automatically terminate immediately on termination of that SOW.
- 4.2. If a SOW is terminated prior to the expiration of the Initial Term, the Customer shall be liable to pay to the Supplier all Fees that would have been due to the Supplier if the SOW had remained in force for the remainder of the Initial Term.
- 4.3. Without prejudice to the parties' other rights, upon termination of this SOW the Customer shall and shall procure that any Authorised Users shall:
 - (a) immediately cease all use of the Cloud Services and the Cloud Documentation;
 - (b) immediately either destroy or deliver up to the Supplier, at the Supplier's discretion, the Cloud Documentation;
 - (c) make immediate full payment to the Supplier in respect of any and all sums payable to the Supplier (whether or not due for payment prior to termination); and
 - (d) comply with any reasonable additional instructions that the Supplier may give from time to time in respect of removing access to the Cloud Services.

5. SUPPLIER'S OBLIGATIONS

- 5.1. The Supplier undertakes that the Cloud Services will be performed substantially in accordance with the SOW and with reasonable skill and care.
- 5.2. The Supplier does not warrant, represent or undertake that the use of the Cloud Services will be uninterrupted or error-free.
- 5.3. Subject to paragraph 5.5, the Supplier's sole obligations and the Customer's exclusive remedies for breach of the undertaking set out in paragraph 5.1 shall be limited to:
 - (a) the Supplier using reasonable endeavours to rectify or remedy any non-conformance with such undertaking; or
 - (b) if in the opinion of the Supplier, the Supplier is unable to rectify such non-conformance within a reasonable timescale or at an economic cost, a refund of the Fees payable under the SOW and at which point the SOW shall terminate in respect of the Cloud Services concerned.
- 5.4. The undertakings in this paragraph 5 shall only apply where the Cloud Services are used and accessed in accordance with the Agreement and in accordance with the Cloud Documentation.
- 5.5. Without prejudice to the generality of paragraph 5.5, the Supplier shall not be liable for any in or failure of the Cloud Services or the Cloud Documentation in respect of defects or failures to the extent that they are attributable to:

- (a) any modification of the Cloud Services by persons other than the Supplier;
- (b) defects or failures in hardware, operating systems or other software (not supplied by the Supplier) or data with which the Cloud Services operate or their incorrect configuration;
or
- (c) defects or failures due to operator error or Force Majeure Event(s).

5.6. The Customer acknowledges that the Cloud Services and Cloud Documentation have not been developed to meet the Customer's individual requirements. The Customer accepts responsibility for the selection of the Cloud Services to ensure that the Cloud Services are suitable for the Customer's needs, compatible with the Customer's and its Authorised Users' hardware and operating systems and other applications and compliant with the Customer's regulatory or legislative obligations.

5.7. The Supplier shall not and cannot restore Data where the Customer has lost Security Credentials and the Supplier shall have no liability in respect thereof.

6. THIRD PARTY PROVIDERS

The Customer acknowledges that the Cloud Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier and the Supplier shall have no liability for Losses arising under such transactions.

7. INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges that all Intellectual Property Rights used or embodied in or in connection with the Cloud Services and Cloud Documentation shall be and remain the sole property of Supplier, or its licensors. The Customer shall have no rights in or to Intellectual Property Rights in relation to the Cloud Services or the Cloud Documentation except as expressly provided in the Agreement.

8. SUSPENSION OF THE CLOUD SERVICES

8.1 The Supplier reserves the right to temporarily suspend any part of the Cloud Services in any of the following circumstances:

- (a) A Force Majeure Event;
- (b) Unscheduled or Emergency Maintenance;
- (c) Planned Maintenance;
- (d) Where required to do so in order to comply with any law, regulation, court order or a request of a government body;
- (e) Where the Supplier reasonably suspects that the Customer's account has been inappropriately used and/or is in breach of this Agreement.

8.2 The Supplier shall not be liability for any failure to provide the Cloud Services as a result of:

- (a) any necessary suspension pursuant to paragraph 8.1;

- (b) where the suspension of the Cloud Services arises due to a failure of the Customer to follow the advice and recommendations of the Supplier including but not limited to equipment, upgrades, services, set up, connectivity, software and security settings or the Customer's improper use of the same.



SCHEDULE 5 – SUPPORT AND MAINTENANCE TERMS

Where, pursuant to the Agreement, the Customer requests or requires support and maintenance services to be provided by the Supplier and the Supplier is willing to provide Support and Maintenance Services to the Customer, the terms of this Schedule shall also apply.

AGREED TERMS:

1. INTERPRETATION

The following definitions and rules of interpretation apply to the provision of Support and Maintenance Services and all capitalised terms used but not defined below shall have the meanings set out elsewhere in the Agreement:

"Correct" means to correct or provide a workable work-around for an Error by means of a Release or other method and **"Corrected"** shall be construed accordingly;

"Effective Date" means the date on which the Support and Maintenance Terms are to take effect as set out in the SOW and if no date is specified it shall be the date of signing of the SOW;

"Error" means any reproducible failure by a Release to operate in accordance with its Documentation or SOW in all material respects;

"Error Report" means the report of an Error made in accordance with paragraph 5.2;

"General Release" means any Release that is made generally available by the Supplier to its licensees from time to time without any additional charge;

"Release" means each patch, enhancement, modification, update, version or release of the Supported Software or Developed Software (as the case may be) that is supplied by the Supplier to the Customer from time to time;

"Support and Maintenance Fees" means the fees set out in the SOW as varied from time to time in accordance with these Support and Maintenance Terms;

"Support and Maintenance Services" means the services to be provided by the Supplier pursuant to these Support and Maintenance Terms as set out in the SOW;

"Support and Maintenance Terms" means the terms set out in this Schedule;

"Supported Software" means the Software in respect of which the Supplier is to provide Support and Maintenance Services pursuant to the SOW;

"Target Resolution Time" means the target resolution time (calculated in Normal Business Hours) measured from the time that the Error Report concerned is logged with the Supplier and all of the information required under paragraph 5.2 has been provided or the start of the next Working Day where such time is outside Normal Business Hours; and

"Target Response Time" means the target response time (calculated in Normal Business Hours) measured from the time that the Error Report is logged with the Supplier and all of the information required under paragraph 5.2 has been provided or the start of the next Working Day where the Error is reported outside Normal Business Hours.

2. PROVISION OF SUPPORT AND MAINTENANCE SERVICES

- 2.1. Subject to payment by the Customer of the Support and Maintenance Fees set out in the SOW and the other terms and conditions of the Agreement, the Supplier agrees to provide the Customer with the Support and Maintenance Services.
- 2.2. Where the Supplier is to provide Support and Maintenance Services to the Customer in respect of any Developed Software, the Supplier shall be obliged to provide such Support and Maintenance Services on acceptance of the Developed Software pursuant to the Professional Services Terms.
- 2.3. The Support and Maintenance Services shall be provided via the Customer's Authorised Representative named in the SOW.

3. SUPPORT AND MAINTENANCE SERVICES

- 3.1. The Supplier shall provide the Support and Maintenance Services set out in the SOW subject to the terms of this paragraph 3:
 - (a) Error Correction
 - (i) When the Supplier receives an Error Report from the Customer's Authorised Representative, the Supplier shall use reasonable endeavours to respond to the Customer and start work to analyse the Error within the relevant Target Response Time.
 - (ii) Following analysis under paragraph (i), the Supplier shall use reasonable endeavours to Correct the Error within the relevant Target Resolution Time. If any Error is not Corrected within 1 Working Day after the expiry of the relevant Target Resolution Time, the Customer may escalate the matter to the Customer Account Manager. If the Error has not been Corrected within 2 Working Days after this first escalation, the Customer may escalate the matter to the Supplier's Technical Account Manager.
 - (iii) Where an Error is not completely Corrected but is reduced in severity to a lower priority, the Target Resolution Time shall be adjusted accordingly.
 - (b) Releases
 - (i) The Supplier shall provide the Customer with each General Release as soon as it is made generally available to the Supplier's licensees together with any amendments to the Documentation at the prevailing rate.

- (ii) Subject to paragraph 3.13(b)(iii) the Software Licence Terms shall govern the Customer's use of each Release and each Release shall be treated for all purposes as part of the Software.
 - (iii) The use of any Release of the Developed Software shall be governed by the relevant Professional Services Terms. Each such Release shall be treated for all purposes as part of the Developed Software.
 - (iv) If requested by the Customer, the Supplier shall provide training for the Customer's staff in the use of each new Release supplied to it as soon as reasonably practicable after its delivery. This training will be provided at the Supplier's Rates applicable at the time that the training is provided plus Expenses.
 - (v) Subject to paragraph 3.13(b)(vi) below, if the Customer does not install the latest Release within 12 months after the Release has been issued to it by the Supplier, the Supplier reserves the right to either withdraw the provision of Support and Maintenance Services for it or to increase the charges for this to such amount as the Supplier reasonably considers appropriate (at the Supplier's sole discretion). However, subject to paragraph 3.13(b)(vi) below, the Supplier will continue to support the Release immediately prior to the latest Release for 12 months after the latest Release has been issued to the Customer. Subject to paragraph 3.13(b)(vi) below, the Supplier will also support each Release for a minimum of 12 months following its delivery to the Customer regardless of the fact that it may issue more than one Release during that period. Where the Customer has not installed the latest Release, Release for the purposes of this paragraph shall include the Release immediately preceding the latest Release.
 - (vi) In respect of Third Party Software, the terms of the relevant third party licensor shall govern the Customer's rights to obtain new releases and versions of such Third Party Software and any right to continue to obtain support in respect of old releases and versions of it. The Customer shall also be obliged to upgrade to new versions and releases of such Third Party Software where and to the extent specified in such third party licensor terms.
- (c) Development, Changes of Law & Operating Systems
- (i) Nothing contained in this Schedule shall oblige the Supplier to make, develop or produce any specific enhancement, modification, update or version of the Supported Software or to develop or modify any other software (other than to use reasonable endeavours to Correct Errors).
For the avoidance of doubt, any requests for changes to the Supported Software (other than Error Correction or the issues of new General Releases) will be dealt with in accordance with the Change Control Procedure.

4. EXCLUSIONS FROM SUPPORT AND MAINTENANCE SERVICES

- 4.1. The Supplier shall have no obligation to respond to or seek to Correct Errors or any other matters or provide any services in respect of:
- (a) use of any Release of the Supported Software other than the most recent Release (except for the limited obligation to support the immediately preceding Release for the period specified in paragraph 3.13(b)(v) or pursuant to paragraph 3.13(b)(vi) above);
 - (b) any Error which was not reported to the Supplier in accordance with paragraph 5.2 within 14 days after the Customer became aware of or discovered such Error (or ought reasonably to have done so);
 - (c) any issue which is dealt with in the Documentation or any Project Materials;
 - (d) Errors resulting from:
 - (i) Adaptations, changes, modifications or enhancements of a Release or the underlying technology having been made by any person other than the Supplier;
 - (ii) use of a Release other than in accordance with the Documentation or any Project Materials;
 - (iii) use of a Release in breach of the terms of the Agreement;
 - (iv) operator error;
 - (v) use of a Release on or with any equipment or any version or release of it (including without limitation any hardware, operating systems or other applications) other than that expressly authorised by the Supplier;
 - (vi) any Force Majeure Event;
 - (vii) any failure by the Customer to implement recommendations previously made to the Customer by the Supplier in respect of any Error or Release or any Correction or other solution provided by the Supplier;
 - (viii) any defect or error in the equipment on which a Release is installed or in any programs, data or other materials used in conjunction with a Release or any failure to properly configure such equipment or programs or to properly install any software or hardware (except where the installation was carried out by the Supplier);
 - (ix) any reported problem, which on investigation by the Supplier is found not to be an Error;
 - (x) rectification of lost or corrupted data; or
 - (xi) Change Requests which, notwithstanding anything in the to the contrary, shall be subject to and dealt with in accordance with the Change Control Procedure.

- 4.2. The Supplier shall make an additional charge in accordance with the Rates from time to time in force (together with Expenses) for any services provided by the Supplier (including investigation, documentation and resolution):
- (a) at the request of the Customer or its agent but which do not fall within the Support and Maintenance Services because of any of the exclusions referred to in sub-paragraph 4.1; or
 - (b) at the request of the Customer or its agent in relation to the Developed Software where no agreement to provide maintenance services in respect of the Developed Software exists; or
 - (c) at the request of the Customer but which the Supplier finds are not necessary or which are logged by the Customer with a higher priority than was reasonably appropriate or are required to be performed or rendered more expensive as a result of the Customer's breach of the Agreement.

For the avoidance of doubt nothing in this paragraph 4.2 shall impose any obligation on the Supplier to provide services in respect of any Error arising due to any of the exclusions referred to in this paragraph 4.1.

5. CUSTOMER OBLIGATIONS

- 5.1. The Customer shall be responsible for providing first line technical support and maintenance to those persons who have a right to use the Supported Software and shall provide this at all times in accordance with good information technology industry practice in England.
- 5.2. If the Customer discovers or becomes aware of any Error, the Customer shall ensure that the Customer's Authorised Representative reports this to the Supplier. The report shall describe the relevant Error in sufficient detail to enable the Supplier to identify and duplicate such Error and include at least the following details:
- (a) Supported Software name and Release level;
 - (b) hardware platform, operating system and other applications with which it is operating (including their relevant versions and releases) and network configuration used;
 - (c) a documented example of the problem and a full description including the steps necessary to enable the Supplier to reproduce the Error (including copies of any data required) if relevant;
 - (d) details of any investigations already carried out by the Customer and their conclusions;
 - (e) the Customer's reasonable view of the priority level of the Error; and
 - (f) any other relevant information reasonably requested by the Supplier.

5.3. The Customer shall ensure that throughout the term of the SOW:

- (a) only the Customer's Authorised Representatives contact the Supplier to request support or report Errors under or in connection with these Support and Maintenance Terms;
- (b) each Release is promptly installed and used following its delivery and in any event within 6 months following delivery (except where the Supplier is responsible for such installation);
- (c) all Releases are used only in accordance with the Documentation and any relevant Project Materials;
- (d) the Customer's databases and computer records are backed up regularly in accordance with best computing practice;
- (e) the Releases, Documentation and Project Materials are not altered or modified or combined with any other programs other than as and to the extent expressly permitted in the Software Licence Terms;
- (f) it does not request, permit or authorise anyone other than the Supplier to provide any maintenance; and
- (g) the Supplier is able to remotely access the systems on or with which the Supported Software operates in order to provide the Support and Maintenance Services.

6. TERMINATION

6.1. The Supplier's obligations to provide Support and Maintenance Services shall automatically terminate immediately on termination of:

- (a) the SOW to which they relate; or
- (b) the Customer's licence or right to use the software for which the Support and Maintenance Services are provided - including Supported Software, any Third Party Software and any Developed Software.

SCHEDULE 6 – PROFESSIONAL SERVICES TERMS

Where, pursuant to the Agreement, the Customer requests or requires professional services to be provided by the Supplier and the Supplier is willing to provide Professional Services to the Customer, the terms of this Schedule shall also apply.

AGREED TERMS:

1. INTERPRETATION

The following definitions and rules of interpretation apply to the provision of Professional Services and all capitalised terms used but not defined below shall have the meanings set out elsewhere in the Agreement:

"Acceptance" means acceptance of the Project Materials and/or the Developed Software (as appropriate) by the Customer in accordance with the procedure set out in paragraph 5 and **"Accept"** and **"Accepted"** shall be construed accordingly;

"Developed Software" means any software (if any) developed or to be developed by the Supplier for the Customer as part of the Professional Services. For the avoidance of doubt, it may include software that forms a bespoke development to or customisation of Software which the Supplier agrees to develop specifically for the Customer under the SOW. However, it excludes any Software that may be supplied to operate with such developments or customisations even where such Software is supplied incorporated with such developments or customisations which will be supplied and licensed pursuant to the Software Licence Terms;

"Effective Date" means the date on which the terms of this schedule (the **Professional Services Terms**) are to take effect as set out in the SOW and if no date is specified it shall be the date of signing of the SOW;

"Initial Requirements" means the initial requirements for the Project as set out or referred to in the SOW;

"Installation Date" means the date on which the Developed Software is to be installed at the Location, as notified by the Supplier to the Customer on the terms of this Schedule;

"Professional Services" means the services to be provided by or on behalf of the Supplier to the Customer as set out in the SOW. It shall include any work previously carried out by the Supplier in connection with the Agreement as well as any work carried out by the Supplier under the SOW;

"Project" means a project agreed between the parties in respect of which Professional Services are to be provided by the Supplier as initially described in outline in the SOW and as described in more detail by a Project Plan attached thereto as updated by the Supplier from time to time;

"Project Plan" means the plan attached to the SOW setting out details of the Project pursuant to paragraph 3 and as updated by the Supplier from time to time;

"Project Materials" means any and all works of authorship, products, and materials developed, written or prepared by or on behalf of the Supplier that are supplied to the Customer as part of the Professional Services (whether individually, collectively or jointly with the Customer and on whatever media), including all reports, studies, data, diagrams, charts, specifications, and working papers relating to them, except that the Project Materials shall exclude ordinary correspondence, software and any source code to software; and

"Replacement Services" means Professional Services that the Supplier provides to the Customer from time to time to replace or supplement existing Professional Services.

2. PROVISION OF PROFESSIONAL SERVICES

Subject to payment by the Customer of the Fees set out in the SOW and the other terms and conditions of this Agreement, the Supplier agrees to provide the Customer with the Professional Services.

3. PROJECT PLAN

3.1. Following the execution of a SOW in which Professional Services are to be provided, the Supplier shall, in consultation with the Customer and with regard to the Initial Requirements, produce a Project Plan which sets out:

- (a) the scope of the Project;
- (b) any estimated or proposed timeline for the Project;
- (c) the Deliverables of the Project; and
- (d) any other features of the Project which the Supplier would like to include.

3.2. Subject to clause 4.2 of the Agreement, the Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Project Plan.

3.3. Where applicable the Supplier shall provide the Customer with the Project Plan in draft form for approval.

3.4. The Customer shall review the Project Plan and within 5 Working Days of receipt notify the Supplier in writing either:

- (a) that it approves the draft; or
 - (b) requesting that changes be made to the draft.
- 3.5. If the Customer fails to notify the Supplier pursuant to paragraph 3.4, the Customer will be deemed to have accepted the Project Plan.
- 3.6. If the Customer gives notice to the Supplier pursuant to paragraph 3.4.(b) the Supplier shall consult with the Customer to discuss the proposed changes.

4. INSTALLATION

- 4.1. Where, pursuant to the SOW, the Supplier has agreed to provide installation services, the terms of this paragraph 4 shall apply.
- 4.2. The Supplier shall notify the Customer of the expected date of installation in advance.
- 4.3. The Supplier shall perform the installation services on the date in paragraph 4.2 at the Location provided that the Customer has complied with all of its obligations under clause 5 of the Agreement.
- 4.4. If the Customer has failed to comply with such obligations, the Supplier reserves the right to postpone the date for installation and invoice the Customer for costs incurred by the Supplier in doing so. Such costs will be calculated in accordance with the Rates.

5. ACCEPTANCE OF PROFESSIONAL SERVICES

- 5.1. The Customer shall notify the Supplier within 10 Working Days from delivery or the date of installation of any defects in the set-up or operation of the Professional Services.
- 5.2. Acceptance of the Professional Services shall be deemed to have occurred on whichever is the earliest of:
 - (a) the expiry of 10 Working Days after delivery or the date of installation where the Customer has not given written notice pursuant to paragraph 5.1; or
 - (b) the use of the Professional Services by the Customer in the normal course of its business.
- 5.3. Where the Customer gives notice pursuant to paragraph 5.1 and the Supplier has agreed to provide Replacement Services under the Agreement, the Replacement Services shall be deemed to have accepted by way of remediation of defects and be deemed to have occurred on the expiry of two Working Days after delivery or the Installation Date, unless the Customer gives notice pursuant to paragraph 5.1.

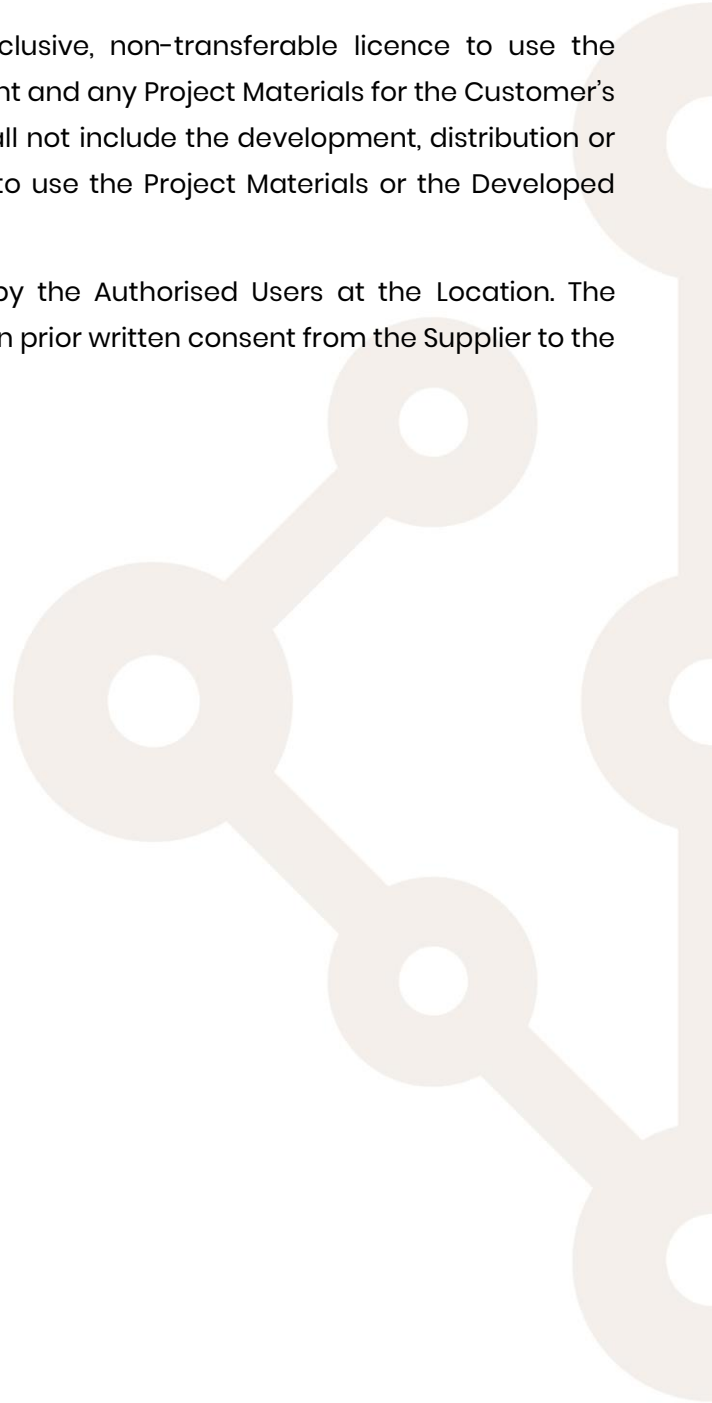
6. TERMINATION

- 6.1. The Supplier's obligations to provide Professional Services shall automatically terminate immediately:

- (a) on completion of the SOW to which they relate; or
- (b) on the delivery of Customer's licence to use the Developed Software to which the Professional Services relate.

7. *DEVELOPED SOFTWARE LICENCE*

- 7.1. The Supplier grants the Customer a non-exclusive, non-transferable licence to use the Developed Software on the Customer Equipment and any Project Materials for the Customer's own internal business purposes (but which shall not include the development, distribution or licensing of them). The Customer agrees not to use the Project Materials or the Developed Software for any other purposes.
- 7.2. The Developed Software may be used only by the Authorised Users at the Location. The Authorised Users may be extended or revised on prior written consent from the Supplier to the Customer.



SCHEDULE 7 – EQUIPMENT TERMS

Where, pursuant to this Agreement, the Customer requests or requires the supply of Equipment to be provided by the Supplier and the Supplier is willing to provide Equipment to the Customer, the terms of this Schedule shall also apply.

1. AGREED TERMS:

All defined terms used in this Schedule shall have the meanings set out elsewhere in the Agreement.

2. SPECIFICATIONS

2.1. Specifications, dimensions and other product details are given in good faith and the Supplier will endeavour to ensure that the Equipment supplied to the Customer complies with such specifications, dimensions and other product details. However, it may not be possible for the Supplier to control minor deviations from specifications, dimensions and other product details and therefore it reserves the right in such cases to supply Equipment of substantially similar specifications, dimensions and other product details.

2.2. Prices are valid as shown and are subject to variation without notice. The Supplier reserves the right to withdraw products from sale unless payment has been received in accordance with clause 7 of the Agreement.

2.3. Delivery is subject to availability of stock. In no circumstances will be the Supplier be liable for delays in delivery.

2.4. Unless otherwise stated, all prices are exclusive of the costs of carriage, insurance and collection (as appropriate) all of which shall be payable by the Customer.

2.5. No order for Equipment which has been received by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall reimburse the Supplier for all costs and liability incurred by it in relation to such cancellation (including loss of profit and the cost of all labour and materials used or appropriated to the Contract).

3. WARRANTIES AND LIMITATIONS OF LIABILITY

3.1. Subject to paragraph 3.3 the parties agree that the implied warranties of merchantability and fitness for a particular purpose and all other warranties whether express or implied including warranties as to description accuracy, quality or productiveness, are excluded from the Agreement and shall not apply to the Equipment. For the avoidance of doubt, any oral or other statements about the Equipment not included in the Agreement do not constitute warranties, may not be relied upon by the Customer and are not part of the Agreement.

- 3.2. Subject to paragraph 3.3 if within 10 working days of delivery any Equipment proves defective or unsatisfactory under normal use the Supplier's entire liability to the Customer shall be satisfied by its refunding the price paid for the Equipment in question.
- 3.3. The Customer shall be entitled to a refund under paragraph 3.2 provided that:
- (a) the Equipment has been used solely for its proper purpose and in accordance with the operating instructions;
 - (b) the defect has not been caused by fire, accident, misuse, neglect, incorrect installation by the Customer or its Customers, agents or servants, unauthorised alteration, repair or maintenance or the use of substandard consumables;
 - (c) the defect has not arisen from any design, specification, component or material supplied by or on behalf of the Customer;
 - (d) no part of the Equipment have been replaced with a part not supplied or approved by the Supplier;
 - (e) payment in full of all sums due in respect of the Equipment has been made; and
 - (f) the Customer has complied with paragraph 4.3.
- 3.4. Subject to paragraph 3.3, the maximum aggregate liability of the Supplier and its officers, employees and agents for all claims whether arising in Agreement, tort, breach of statutory duty or otherwise made by the Customer in respect of or arising from any Agreement shall not exceed the amount paid by the Customer for the Equipment supplied pursuant to such Agreement.
- 3.5. Without limiting the foregoing but subject to paragraphs 3.3 and 3.5, the Supplier shall not be liable for any special, incidental or consequential losses or damages (including loss or diminution in value of any items held, worked on or processed by the Supplier; loss of profit, revenue, use, anticipated savings or goodwill; loss or corruption of data; business interruption; management costs or third party liability).
- 3.6. Unless the Supplier is contracted to do so, the Customer shall take all precautions to protect its data and shall ensure that a regular data back-up arrangement is implemented before and during the Agreement. The Customer shall be responsible for restoring any lost or corrupted data unless such loss is caused by the negligence or wilful default of the Supplier in which case the Supplier's liability shall be limited to the reinstatement where possible of all data proven to have been lost or irremediably corrupted and which would not have been included in such back-up arrangements required to be maintained by the Customer.

4. CONDITION ON DELIVERY

- 4.1. Unless the Supplier is notified in writing by the Customer within 10 working days after delivery of the Equipment, it shall be conclusively presumed that the Equipment was delivered in a good operating condition and in complete accordance with the manufacturer's description and the Customer's requirements and the Equipment shall be deemed to have been accepted.
 - 4.2. The Customer agrees that the Equipment may be delivered using standard packaging, and that the original packaging may not be available or suitable for delivery.
 - 4.3. The Customer may only return Equipment to the Supplier if the Equipment is proven to be faulty within 10 working days of shipment and upon receipt of an authorised Supplier RMA number. The Customer shall return the Equipment at its own expense.
5. LAW AND EXPORT
- 5.1. Where the Equipment is supplied by the Supplier for export from the United Kingdom, the Customer shall comply with all applicable legislation and regulations and payment of any duties, import taxes or other costs of import. If the Supplier notifies the Customer that export of the Equipment into a country is prohibited under the Supplier's export licenses, the Customer shall not supply or offer the Equipment for supply into or within that country. The Customer shall obtain all licenses, authorisations and approvals required for export of Equipment from the UK or import into any other country and shall indemnify the Supplier against any liability in relation to the Customer's breach of any of the provisions of this paragraph 5.