

## MASTER SERVICES AGREEMENT

### BACKGROUND

- (A) The Supplier has developed and will provide the Services.
- (B) The Customer wishes to use the Supplier's Services in its business operations.
- (C) The Supplier has agreed to provide, and the Customer has agreed to take and pay for, the Services, subject to the terms and conditions of this Agreement.

### AGREED TERMS

#### 1. INTERPRETATION

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

**Acceptance Criteria:** means the acceptance criteria as specified in Clause 9.2 or referred to in a Service Specification or as otherwise agreed by the Parties expressly in writing after the date of the Service Specification against which the Acceptance Tests are to be carried out to determine whether the Deliverables meet the Service Specification, are satisfactory and ready to be invoiced.

**Acceptance Tests:** means the acceptance tests as specified or referred to in the Service Specification or as agreed between the Parties, to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

**Agreement:** means the terms and conditions in this agreement along with the Service Specification(s).

**Background Materials:** means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by the Supplier which may have been created outside the scope, or independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

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

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

**Change Order:** means any request to alter the Services pursuant to this Agreement as set out in Clause 14.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors

involved in the provision or receipt of the Services (together, its **Representatives**) to the other Party and that Party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Commencement Date:** means the date of this Agreement unless otherwise specified in the relevant Service Specification.

**Customer:** the customer as identified in the Service Specification.

**Customer Data:** any information that is provided by the Customer to the Supplier as part of the Customer's use of the Services, including any information derived from such information.

**Customer Site:** means the locations where the Services are provided as identified in the Services Specification.

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

**Customer-side Equipment:** any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by the Supplier as part of the Services.

**CSP Agreement:** the CSP customer agreement, which is a direct agreement between the Customer and Microsoft and is a condition of Cloud Solution Provider Program that the Client enters into this Agreement, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time.

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

**Document:** means, 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.

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

**Designated User:** means any user of the Services named to the Supplier as a user by the Customer.

**Dispute Resolution Procedure:** the procedure described in Clause 28.

**Fair Usage Policy:** the fair usage policy as [set out here](#).

**Fees:** the fees payable to the Supplier, as described in the Service Specification as may be varied from time to time pursuant to the terms of this Agreement.

**Force Majeure:** any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, riot, computer viruses and malware, epidemics, pandemics, civil commotion, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lock out of the party's own staff shall not entitle them to claim that to be a force majeure event.

**Good Industry Practice:** the standards that fall within the upper quartile of a skilled and experienced provider of business-critical managed services similar or identical to the Services, having regard to factors such as the nature and size of the Parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

**Goods:** the goods to be provided as part of the Services (or any part of them), as set out in the Service Specification in the relevant section or as otherwise agreed in writing between the Parties.

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

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

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

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

**Licence Agreement:** means all licence agreements that may have to be entered into by the Supplier and/or the Customer in respect of Third Party Services used. Such Licence Agreement terms shall be set out in the relevant Service Specification.

**Local System Components** means equipment supplied by the Customer such as routers, switches, PCs, thin client devices, smart phones, wireless controllers and access points;

**Losses:** means costs, fines, damages, losses and liabilities suffered by a Party.

**Managed Services:** the hosting and support service described in the Service Specification to be performed by the Supplier in accordance with this Agreement.

**Normal Business Hours:** 08.30 am to 5.30 pm local UK time on Business Days.

**Party:** a party to this Agreement or parties.

**Professional Services:** the service described in the Service Specification to be performed by the Supplier in accordance with this Agreement.

**Rates:** the Supplier's standard hourly or daily fee rates as set out in the applicable Service Specification.

**Relief Events:** the following events:

- (a) any failure by the Customer to comply with its obligations under this Agreement;
- (b) any error or malfunction in the Business Systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
- (c) any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this Agreement; or
- (d) any of the causes or events set out in Clause 11.7.

**Representative:** means the person nominated by each Party in accordance with this Agreement.

**Retail Prices Index:** means the Retail Prices Index (all Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree (such agreement not to be unreasonably withheld or delayed), acting reasonably, most closely resembles such index.

**Scheduled Downtime:** means the total amount of time during which the Customer is not able to access the Services due to planned maintenance. The Supplier may schedule system downtime, with prior agreement of the Customer. Scheduled Downtime periods do not count against the service level calculation detailed in such Service Specification.

**Service Level Arrangements:** the service level arrangements set out in the Services Specification.

**Services:** means the use of the Goods, Managed Services and/or the Professional Services including consulting, advisory, integration or technical services performed by the Supplier under a Service Specification or otherwise agreed further to the signed written agreement between the Parties.

**Service Specification:** the service proposal and any other services specification for either the Professional Services, Managed Services and/or Goods as set out under separate cover and agreed between the Parties.

**Subsequent Term:** means 12 months commencing on the last day of the Term or previous Subsequent Term.

**Supplier: Pro Drive IT Limited** a company registered in England with number **03467064** and having its registered office at Unit 22, Home Farm, Loseley Park, Guildford, Surrey, GU3 1HS.

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

**Term:** means the period commencing on the Commencement Date and ending on the date three years thereafter unless otherwise specified in the Service Specification. For the avoidance of doubt, each Service Specification will have their own Term, which will extend the Term of the Agreement if the term of the Service Specification is longer than the Term of the Agreement.

**Third-Party Services:** any services, goods, code or software programs written or provided by other Third Parties (as defined in Clause 4.3) which are used by the Customer during the provision of the Services.

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

**Unscheduled Downtime:** means any time when any or all of the applications and Services provided by the Supplier to the Customer shall be unavailable to the Customer due to unexpected system failures other than Scheduled Downtime or the downtime is attributable to events not under the control of the Supplier.

- 1.2 Clause, and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to **writing** or **written** includes e-mail.
- 1.9 Any phrase introduced by the words **including, includes, in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 References to Clauses are to the Clauses of this Agreement.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.12 In the event of any conflict or inconsistency between the Clauses, the Service Specification, and the Licence Agreement (including any changes or variations to each of the Clauses, the Service Specification, and the Licence Agreement), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
- (a) the Service Specification;
  - (b) the Licence Agreements, to the extent applicable to the respect Services;
  - (c) the Clauses.

## **2. PROVISION OF SERVICES**

- 2.1 This Agreement sets out the terms and conditions under which the Supplier shall provide to the Customer the Services.
- 2.2 Where the Services include the supply of Goods, the provisions of Schedule 1 shall apply.
- 2.3 This Agreement shall (i) be in substitution for any prior oral or other prior arrangements between the Supplier and the Customer in connection with the purchase of the relevant Services; and (iii) prevail over any of the Customer's inconsistent terms or conditions contained in, or referenced in, any order confirmation or other acknowledgement, quotation, purchase order(s), delivery note, invoice or similar document or implied by law, trade custom or practice.
- 2.4 No addition to, variation of or other amendment or purported amendment to any Service Specification or this Agreement shall be binding on the Parties unless expressly stated as

such, made in writing and signed by or acknowledged by a duly authorised Representative of both Parties.

### **3. MANAGED SERVICES**

- 3.1 The Supplier will provide the Managed Services in accordance with the Service Specification and the terms of this Agreement with all due care, skill and ability during the Term and a Subsequent Term (if applicable) unless earlier terminated for any reason.
- 3.2 The Supplier shall provide the Managed Services in accordance with the Service Level Arrangements as stated in the Service Specification.
- 3.3 The Customer shall remain responsible for the use of the Managed Services under its control.
- 3.4 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier will work with the Customer to alleviate the situation as quickly as possible. The Parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 3.5 The Customer shall not provide the Managed Services to third parties without the prior written consent of the Supplier.
- 3.6 The Customer acknowledges that certain conditions outside of the Supplier's control may adversely impact the ability of the Supplier to perform functions of the Managed Services. Examples of such conditions are listed below:
- (a) failure of Customer Hardware, software or operating system;
  - (b) partial or full failure of Third-Party Services;
  - (c) Network connectivity issues between Local System Components and the Supplier's platform;
  - (d) Network connectivity issues between Local System Components and its third party's servers.
- 3.7 The Supplier reserves the right to:
- (a) modify the Supplier's System, its network, system configurations or routing configuration; or
  - (b) modify or replace any Hardware or Software in its network or in equipment used to deliver any Managed Service over its network,

provided that this has no adverse effect on the Supplier's obligations or performance under this Agreement and its provision of the Managed Services or the Service Level

Arrangements. If such changes will have an adverse effect, the Supplier shall notify the Customer and the Parties shall follow the Change Order.

- 3.8 If the Supplier breaches its obligations in Clause 3.1, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.

#### **4. RESPONSIBILITIES OF SUPPLIER**

4.1 The Supplier shall:

- (a) provide the Services in accordance with the terms of this Agreement and the Service Specification;
- (b) use its commercially reasonable endeavours to complete any Deliverables set out under any Service Specification;
- (c) commit sufficient resources to the provision of the Services to enable their delivery in accordance with the Agreement and Service Specification;
- (d) provide the Services with due care, skill and ability in accordance with Good Industry Practice;
- (e) take such steps as may be required to fulfil its obligations under this Agreement and any Service Specification;
- (f) utilising suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care;
- (g) notify the Customer promptly if the Supplier is unable to comply with any of the terms of this Agreement, any of the Licence Agreements or any Service Specification; and
- (h) observe and ensure that its personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer Sites and which have been communicated to it a week prior to the Services commencing, where the Supplier is required to be on such Customer Sites for the provision of the Services.

4.2 The Supplier shall co-operate with the Customer in all matters relating to the Services and shall appoint a Representative ("Supplier Representative"), as the contact throughout the Services.

4.3 The Customer confirms that the Supplier may employ sub-contractors without seeking the prior consent of the Customer. Notwithstanding the foregoing, the Supplier shall at all times be responsible for and liable in respect of the performance of all obligations under this Agreement, whether such obligations are performed by the Supplier itself, or any sub-contractor engaged by the Supplier and under the supervision of the Supplier.



For the avoidance of doubt, the Supplier shall only be held liable to the extent permitted under the respective Licence Agreements for the actions or omissions of any third parties consisting of: (1) Datto (2) Sophos; (3) Mimecast; (4) Fluidone; (5) Softcat; and (6) Egnyte and shall not be held liable for the actions and or omissions of the following (whereby the Customer will have a direct contract in place with Microsoft through the CSP Agreement; such lists may be updated from time to time (together the "Third Parties").

- 4.4 The Supplier shall provide reasonable notice to the Customer of any change in its senior personnel engaged as part of the Services. Where relevant, the Supplier shall replace any senior personnel who are removed with another appropriately skilled person.
- 4.5 In relation to the Managed Services specifically and notwithstanding the Supplier's obligations under Clause 4.1, the Supplier shall:
- (a) staff the Supplier support desk with a team of skilled individuals (whether subcontracted or not);
  - (b) maintain a team skilled in the platform and with knowledge of the systems developed to deliver the solution;
  - (c) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;
  - (d) undertake a regular account review if requested by the Customer, to discuss the Customer's service needs and ensure that the Agreement is in alignment with its needs;
  - (e) use commercially reasonable endeavours to follow the instructions of the Customer and will remain courteous during any communications with Customer personnel; and
  - (f) provide the Customer with reasonable co-operation in relation to this Agreement.
- 4.6 The Supplier shall be under no obligation to provide the Managed Services to the Customer in the following circumstances (unless specified under the Service Specification);
- (a) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
  - (b) providing any other services not covered herein;
  - (c) training; and
  - (d) providing the Managed Services to the Customer where such support would have been unnecessary if the Customer had implemented update(s) and upgrade(s) supplied or offered to the Customer pursuant to the call for technical support.

## 5. RESPONSIBILITIES OF CUSTOMER

- 5.1 To the extent that the Supplier requires access to the Customer Site to perform the Services, the Customer shall provide such access during Normal Business Hours and to provide a suitable work environment to enable the Supplier to perform such Services subject to the Supplier complying with such internal policies and procedures of the Customer (including those relating to security and health and safety) as may be notified to the Supplier in writing from time to time.
- 5.2 The Customer shall co-operate with the Supplier in all matters relating to the Services and shall appoint a minimum of two Representatives ("Customer Representatives"), who shall have authority to commit the Customer on all matters relating to the relevant Service.
- 5.3 The Customer agrees and acknowledges the terms of the applicable Licence Agreements and the terms of the CSP Agreement shall form part of this Agreement. For the avoidance of doubt, in the event the applicable Licence Agreements, and/or the CSP Agreement is not applicable to the Services being received or delivered by the Supplier to the Customer under this Agreement, such agreements shall not apply.
- 5.4 Customer shall:
- (a) adhere to the Fair Usage Policy;
  - (b) ensure it has suitable licences in place for any third party software required (which is not issued by the Supplier) to allow the Supplier and its subcontractors full use in relation to the Services provided;
  - (c) co-operate with the Supplier in all matters relating to the Services as reasonably requested by the Supplier;
  - (d) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
  - (e) allow the Supplier or its designated subcontractors and Third Parties, global admin access to the Customer's relevant servers and networking systems for the duration of the Agreement;
  - (f) provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
  - (g) provide all information and make available all resources as reasonably requested by Supplier in the execution of its obligations under this Agreement;
  - (h) use all reasonable efforts to follow the reasonable instructions of Supplier support personnel with respect to the resolution of defects;
  - (i) gather all relevant information prior to requesting assistance in respect of any defects including detailed defect description, and procedures required to replicate a problem if possible. Any additional information which may help in

the diagnosis of a defect should be included such as network configuration details; and

- (j) agree that if, in the course of performing the Services, it is reasonably necessary for the Supplier's performance of its obligations under a Service Specification for Supplier to access or use any equipment, software or data of the Customer (or which is in the possession of the Customer) then it shall where it is able to do so grant to Supplier and any of its subcontractors a non-exclusive, royalty free, terminable licence to use the same solely for the purpose of delivering the Services only for as long as is strictly necessary to deliver such Services.

5.5 The Customer shall (unless otherwise specified in the Service Specification or as otherwise set out in this Agreement):

- (a) use the Services only for lawful purposes and in accordance with this Agreement;
- (b) keep secure from third parties any passwords issued to the Customer by the Supplier;
- (c) permit the Supplier to install the current version of software required to provide the Managed Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
- (d) provide the Supplier at least 7 Business Days' notice in advance of any intention or move to change when applicable Customer-side Equipment or Customer's Operating Environment or data-feeds that will directly impact the Managed Services. If such notice has not been received on time, the Supplier will have to make additional effort to return the Customer's systems to an acceptable state for continued support, and will charge accordingly at its then standard charging rate;
- (e) comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- (f) carry out all other Customer responsibilities set out in this Agreement and the Service Specification in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, the Supplier may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.

5.6 In the event that the Customer is in breach of its obligations under the Agreement (excluding payment obligations) then the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing thirty (30) Business Days' notice to remedy such breach if capable of remedy. If the Customer fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Service Specifications and/or Service Level Arrangements as a direct result of the Customer

(including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.

- 5.7 In the event that the Customer is in breach of its payment obligations under the Agreement then the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing seven (7) days notice to remedy such breach if capable of remedy. If the Customer fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Service Specifications and/or Service Level Arrangements as a direct result of the Customer (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.

## **6. PROJECT ORGANISATION**

- 6.1 If requested in writing by the Customer or specified in the Service Specification, the Customer Representatives and the Supplier Representative shall have regular meetings to monitor and review the performance of this Agreement, to discuss any changes proposed in accordance with Clause 14 and to discuss the Service Level Arrangements.
- 6.2 Before each meeting, the Customer Representatives shall notify the Supplier Representative, and vice versa, of any problems relating to the provision of the Services for discussion at the meeting. At each such meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next meeting.

## **7. PRICE AND PAYMENT**

- 7.1 The Customer shall pay the Fees for the Services (including any Third-Party Services) as more fully set out in the relevant Service Specification.
- 7.2 Clause 7.3 shall apply if the Services are to be provided on a time-and-materials basis. The remainder of this Clause 7 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.
- 7.3 Where the Services are provided on a time-and-materials basis:
- (a) the Supplier's standard hourly or daily rates are calculated on the basis of Normal Business Hours;
  - (b) the Supplier shall be entitled to charge an overtime rate for time worked outside Normal Business Hours as set out in the Service Specification;
  - (c) the Supplier shall complete the relevant time recording systems to calculate the Fees for each invoice charged on a time and materials basis.
- 7.4 The Supplier shall invoice the Fees in accordance with the payment intervals stated in the Service Specification.

- 7.5 The Fees exclude:
- (a) (unless otherwise agreed and set out in the Service Specification), the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier or its subcontractors in providing the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Customer for the Services ("**Expenses**"). The Supplier shall obtain the Customer's prior written approval before incurring any such expense, material or service exceeding a total cost of £1,500 in the aggregate per day and shall be payable by the Customer in accordance with Clause 7.6; and
  - (b) unless otherwise set out in the Service Specification, the costs of packaging, insurance and transport of the Goods.
- 7.6 The Customer shall pay each undisputed invoice for the Fees and Expenses in full and cleared funds (without deduction or set-off) within 30 days of the date of such invoice unless otherwise agreed in writing by the Supplier or unless otherwise set out in the Service Specification. In the event the Customer pays by direct debit, the details of such direct debit payments shall be set out in the Service Specification, as applicable. The Customer shall pay each undisputed invoice for the Fees in full and cleared funds (without deduction or set-off) by direct debit in advance unless otherwise agreed (Expenses shall be invoiced separately) of providing the Services or delivering the Goods, as applicable.
- 7.7 All payments by the Customer hereunder shall be in United Kingdom pound sterling unless otherwise agreed or set out in the Service Specification and shall be paid to the Supplier's bank account as advised by the Supplier to the Customer in writing.
- 7.8 All amounts stated are gross amounts but exclusive of VAT or other sales tax which shall be paid by the Customer, if applicable, at the then prevailing rate subject to receipt of a valid VAT invoice or other sales tax invoice.
- 7.9 Should the Customer be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Fees payable shall be increased by the amount of such tax to ensure that the Supplier receives a sum equal to the amount to be paid under the applicable Service Specification.
- 7.10 Without prejudice to any other remedy that the Supplier may have, if payment of the Fees or any part thereof is overdue then unless the Customer has notified the Supplier in writing that such payment is in dispute within 10 days of the receipt of the corresponding invoice the Supplier may, without prejudice to any other rights or remedies, charge the Customer interest on the overdue amount at the rate of 4% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.11 The Customer shall not be able to dispute any amounts which have been paid by the Customer after a period of 3 months has elapsed from the date of invoice.

- 7.12 The Supplier shall not be obliged to provide any of the Services and/or deliver any Goods while any duly issued invoice(s) remain unpaid under any Service Specification, but should the Supplier choose to continue to do so, this shall not in any way be construed as a waiver of the Supplier's rights or remedies.
- 7.13 Subject to Clause 7.14 below, the Fees relating to the provision of Services shall increase on an annual basis with effect from each anniversary of the Commencement Date (each such period being a "Service Year") in line with the percentage increase in the Retail Prices Index in the preceding 12-month period.
- 7.14 For the avoidance of doubt, the Supplier may increase any fees related to Third-Party Services in line with any increases imposed upon the Supplier by such Third Parties upon 30 days' notice and in line with the terms of the Licence Agreement, and/or the CSP Agreement.
- 7.15 Notwithstanding and subject to Clauses 7.13 and 7.14, the Supplier reserves the right, on giving the Customer 30 days' notice, to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. If the Customer does not agree with this increase, then they may terminate this Agreement upon 30 days written notice and before such price increase takes effect. If the Supplier does not receive written notice within thirty (30) days, the Customer is deemed to have agreed to the amendment to the Fees.

## **8. WARRANTIES AND SERVICE LEVELS**

8.1 The Customer warrants that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Customer;
- (b) it has the authority to grant any rights to be granted to the Supplier under this Agreement;
- (c) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to the Supplier and any of its subcontractors, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement; and
- (d) the Supplier's use in the provision of the Managed Services or otherwise in connection with this Agreement of any third-party materials, including any Hardware or Software supplied by the Customer to the Supplier for use in the provision of the Managed Services or otherwise in connection with this Agreement, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.

8.2 The Supplier warrants and represents that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
  - (b) it owns or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement including for the Customer's use and receipt of the Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
  - (c) it will comply with all applicable laws in performing its obligations under this Agreement; and
  - (d) the Customer's use of any Supplier materials and/or third-party materials, including any materials supplied by the Supplier to the Customer, shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party.
- 8.3 Except for any warranties and service levels expressly set forth in this Agreement, the Services are provided on an "as is" basis, and Customer's use of the Services is at its own risk. Supplier does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.
- 8.4 In the event that a defect, fault or impairment in the provision of the Service(s) causes a service interruption and the Supplier becomes aware of this either through the Customer giving notification to the Supplier of such defect, fault or impairment, or as a result of the Supplier's monitoring, then the Supplier shall use its commercially reasonable endeavours to resolve that defect, fault or impairment as more fully set out in the Service Specification and to the extent it reasonably can.
- 8.5 If the Supplier determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from: (i) the negligence, act, omission, or default of the Customer or Designated User, (ii) the Customer's breach of this Agreement, or (iii) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Customer or (iv) any third party action in response to an act or omission of the Customer or any person given access to the Service by the Customer (including third party hosted software vendors) then the Supplier may recover from the Customer all reasonable costs to be incurred by it or on its' behalf in connection with the remedy of such defect, fault or impairment. Therefore, for the avoidance of doubt, the Supplier can make no commitment to fix any fault and time is not of the essence.
- 8.6 Unless otherwise agreed or set out in the Service Specification (as forming part of the Service) if the Customer accesses the Services through the public Internet or through a private circuit provisioned by a bandwidth provider of the Customer's choice, the Customer assumes responsibility for managing the relationship with this chosen provider,

including service level commitments for issues found to be in the chosen provider's network.

- 8.7 If the Customer moves from one Customer Site to another site or makes changes to any Customer Site or opens a new location to be added to the Customer Sites, the Customer must notify the Supplier in advance. The Supplier may need to carry out an inspection of any cabling and advise the Customer of any work to bring the IT Infrastructure up to standard operating conditions at the new location in order to remain eligible for coverage. The Supplier will provide a quotation if it is to provide additional resources or services in the case of any change at the Customer Sites or new Customer Sites for including as part of the Fees.
- 8.8 The Supplier will request approval from the Customer's Representatives before making any significant changes to the Services. The Supplier will arrange any Scheduled Downtime in advance with the Customers Representatives. The Supplier is not responsible for Unscheduled Downtime that is due to anything outside the Supplier's control and the Supplier and its subcontractors may suspend some or all of the Services in order to carry out scheduled or emergency maintenance or repairs.
- 8.9 The Supplier will carry out network management routines to test the operations and functions of the relevant Services from time to time, notifying the Customer in advance.
- 8.10 The Supplier reserves the right to take any action that it perceives necessary to protect the Customer's systems even though this may impact on the Customer's business activities. The Supplier will make reasonable endeavors to inform the Customer by telephone or email in advance of such action, but such action will not be dependent on such notification having been given or acknowledged.
- 8.11 The Service Level Agreements are specific to directly provided Services of the Supplier and do not relate to Third Party Services (of which such Third-Party Services will be governed by their own relevant service levels).
- 8.12 The Supplier shall not in any circumstances be liable under its obligations in this Clause 8 if it can demonstrate that any failure of the Services was caused or contributed to by any Relief Event.
- 8.13 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error-free.
- 8.14 The Customer hereby warrants that it has not been induced to enter into this Agreement by any prior representations, nor has it relied on any oral representation made by the Supplier or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by the Supplier.

## **9. ACCEPTANCE OF THE PROFESSIONAL SERVICES**

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



## 9.2 In relation to any Acceptance Testing:

- (a) the Customer shall have a reasonable period of time, up to five Business Days unless otherwise specified in the Service Specification, from the Supplier's delivery of each Deliverable under the relevant Service Specification (the "Acceptance Period") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "Acceptance Criteria"). If the Customer determines that a Deliverable does not conform to the Acceptance Criteria, the Customer shall by the last day of the Acceptance Period provide to the Supplier an Issues List of the non-conformities to the Acceptance Criteria;
- (b) the Customer shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period (as defined in Clause 9.2 (a)) if any of the Deliverables do not conform to the Acceptance Criteria. In the event that Customer has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under these Conditions such Deliverable, shall be deemed accepted as if the Customer had issued a written acceptance thereof. Once the Deliverable has been accepted by the Customer and payment has been settled in accordance with Clause 7, the Deliverable shall become the property of the Customer. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 9.2 (c) below.
- (c) If there are any non-conformities within any Deliverable, which have been highlighted by Customer or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Customer for this reason and such non-conformity is a directly attributable act or omission on the part of the Supplier (and not subject to a Change Order (as defined in Clause 14 or attributable to the Customer's acts or omissions including inadequate Acceptance Testing) the Supplier shall (without prejudice to the Customer's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- (d) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Customer to be outside the Supplier's control and which has disabled the Supplier's ability to remedy such non-conformity, then the Supplier reserves the right to terminate work on that specific Deliverable. Supplier agrees not to charge Customer, any amounts paid or payable by Customer to Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied.

## 10. DATA PROTECTION

- 10.1 The Supplier shall promptly notify the Customer in writing of any loss or damage to the Customer Data. The Supplier shall not remove media or data other than with the Customer's permission, and only for the purpose of providing the Services, testing software or at the Customer's express request. Such media or data are held only for as long as necessary for the Supplier to complete the related purpose or as agreed with the Customer, and the Customer may not rely on them in any way as part of Customer backup procedures. The Supplier will use all reasonable endeavours to ensure that no data is lost, but disclaims all liability for the loss of any data. The Supplier will notify the Customer of any failures it discovers in the backup system. If as part of the Services only (and as specified in the relevant Service Specification), the Supplier will monitor the Customer's backup systems for the purpose of checking that data is backed up, provided however that the Supplier excludes all liability in respect of any backups that subsequently fail where they are due to environmental conditions, human input or other factors outside of the control of the Supplier, its subcontractors, Third Parties or as otherwise set out in this Agreement.
- 10.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation.
- 10.3 For the purpose of this Agreement, the words Data Controller, Data Processor, Personal Data, Data Subject and process/processing have the meanings given to them in the Data Protection Legislation.
- 10.4 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor. The Customer warrants that it will comply with all its obligations as Data Controller under the Data Protection Legislation, and that it will where the Supplier is to process Personal Data on the Customer's behalf, identify the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject, an example of which is [set out here](#) containing such detail as may be required to ensure compliance with the Data Protection Legislation. In the event the DP Link is not accurate, the Customer must immediately and before signing a Service Specification identify the changes needed to be made to the DP Link. If no notice of changes have been received before signature, the DP link shall be agreed by the Parties as accurate. The Supplier shall not be deemed to have breached any of its obligations as Data Processor by virtue of a breach of the Data Protection Legislation by the Customer as Data Controller. The Supplier shall not be deemed liable for any claim including but not limited to a claim by a Data Subject arising from any action or omission by the Supplier to the extent that such action or omission resulted directly from the Customer's instructions.

- 10.5 The Customer's Personal Data held on the Supplier's system shall remain the property of the Customer.
- 10.6 The Customer may request the Supplier and its subcontractors to host the Customer's applications inclusive of its Personal Data. Where the Customer request the Supplier to host its Personal Data as part of the Services, the Customer warrants that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and its subcontractors for the duration and purposes of the relevant Service Specification.
- 10.7 Without prejudice to the generality of Clause 10.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under a Service Specification or this Agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data ("**Applicable Laws**"). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (d) not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:
    - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

- (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of a Service Specification unless required by Applicable Law to store the Personal Data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 10 and allow for audits by the Customer or the Customer's designated auditor, such audits to be conducted on reasonable notice (but in any event on giving Supplier not less than seven (7) days' notice, unless the Customer has reasonable grounds for giving shorter notice) and during Normal Business Hours on Business Days.
- 10.8 To the extent that the Supplier cannot comply with a change to the Customer's instructions when processing Personal Data without incurring material additional costs:
- (a) the Supplier shall: (i) immediately inform the Customer, giving full details of the problem; and (ii) cease all processing of the affected data (other than securely storing those data) until revised instructions are received; and
  - (b) any changes in the Customer's instructions that affect the pricing structure or commercial relationship between the Parties should go through an appropriate Change Order (as set out in Clause 14).
- 10.9 The Supplier may only authorise a third party ("**Subprocessor**") to process the Personal Data if:
- (a) the Customer is provided with an opportunity to object to the appointment of each Subprocessor within 3 Business Days after the Supplier supplies the Customer with full details regarding such Subprocessor;
  - (b) the Supplier enters into a written contract with the Subprocessor that contains terms substantially the same as those set out in this Clause 10, in particular, in

relation to requiring appropriate technical and organisational data security measures, and, upon the Customer's written request, provides the Customer with copies of such contract;

- (c) the Supplier maintains control over all Personal Data it entrusts to the Subprocessor; and
- (d) the Subprocessor's contract terminates automatically on termination of this Agreement for any reason.

10.10 Those Subprocessor's as approved by the Customer at the commencement of this Agreement are as set out in the Service Specification.

10.11 Where the Subprocessor fails to fulfil its obligations under such written agreement, the Supplier remains fully liable to the Customer for the Subprocessor's performance of its agreement obligations.

## 11. INTELLECTUAL PROPERTY RIGHTS

11.1 Subject to Clause 11.2 below, on creation by the Supplier and upon the Supplier receiving payment in full, all Intellectual Property Rights in bespoke materials or code created under the Services ("**Bespoke IPR**") for the Customer shall vest automatically in the Customer. Supplier hereby assigns to the Customer its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Customer hereby provides a irrevocable, worldwide, royalty-free licence to the Supplier for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.

11.2 Notwithstanding Clause 11.1 above, the Supplier and its respective licensors shall retain exclusive ownership of (i) all of its Background Materials; and (ii) ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are of general application and that are not based on or derived from the Customer's business or Confidential Information ("**General IP**", together with the Background Materials, the "**Supplier Intellectual Property**"). The Supplier grants to the Customer a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use the Supplier Intellectual Property.

11.3 The Customer shall pay and indemnify Supplier, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Supplier, arising by reason of claims that (1) Supplier's possession of or use of the Customer's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Customer or any of its Customers, modify, alter, replace combine with any other data, code, documents or other software, which alters the Supplier's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

- 11.4 The Supplier shall pay and indemnify Customer, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Customer, arising by reason of claims that (1) Customer's possession of or use of the Supplier's Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Supplier, modifies, alters, replaces combines with any other data, code, documents or other software, which alters the Customer's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 11.5 If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 11, the Indemnified Party shall:
- (a) notify the Indemnifying Party in writing of any IPR Claim against it in respect of which it wishes to rely on the indemnity at Clause 11.3 or Clause 11.4 (as applicable);
  - (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
  - (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
  - (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 11.6 If an IPR Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought, Supplier may at its own expense ensure that the Customer is still able to use the Deliverables by either:
- (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or
  - (b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Customer, such acceptance not to be unreasonably withheld.

11.7 Except to the extent that the Supplier should reasonably have known or advised the Customer the foregoing provisions of Clause 11.6, the Supplier shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:

(a) any use by or on behalf of the Customer of the combination with any item not supplied or recommended by the Supplier where such use of the Deliverables directly gives rise to the claim, demand or action; or

(b) any modification carried out on behalf of the Customer to any item supplied by the Supplier under this Agreement if such modification is not authorised by the Supplier in writing where such modification directly gives rise to a claim, demands or action.

## **12. LICENCES**

12.1 The Supplier shall procure any Third-Party Services required by the Customer for the provision of the Services and as more fully set out in the Service Specification. Except as expressly set out in the relevant Licence Agreement, the Supplier expressly excludes any warranty to the Customer that the Third-Party Services supplied or licensed under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in the its marketing, sales or other associated documentations. The Customer shall remain liable for any and all payments owed to the Supplier throughout this Agreement and until the end of the respective licence terms for such Third-Party Services (the "Licence Fees").

12.2 It is a condition of this Agreement that the Customer shall enter into such direct Licence Agreements issued by the Third Party where the Customer must directly contract with that Third Party as so prescribed by the relevant software owners of each Third-Party Services identified within this Agreement and/or in the applicable Service Specification. In the event the Customer does not accept the terms of such Licence Agreements (whether directly contracted with the Supplier or the relevant Third Party), the Supplier reserves the right to suspend the provision of the Services until such time as the Customer enters into such Licence Agreement.

12.3 The Customer acknowledges that it is responsible for ensuring that the Customer's Hardware, and operating software for such Hardware is compatible with the Third-Party Services and the Supplier gives no warranty in relation thereto unless agreed otherwise in writing between the Parties in the Service Specification.

## **13. EXCLUSIONS, LIMITATIONS OF LIABILITY, WARRANTIES AND INDEMNITIES**

13.1 The Customer acknowledges and agrees that, except as expressly provided in this Agreement or unless it is a Service under a relevant Service Specification, the Customer assumes sole responsibility for:

(a) all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Customer's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including

the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and

- (b) loss or damage arising from or relating to any Relief Event.
- 13.2 This Clause 13 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:
  - (a) any breach of this Agreement; and
  - (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 13.3 Nothing in this Agreement excludes or limits either Party's liability for:
  - (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of Clauses 11.3, 11.4 and 20;
  - (d) any other liability which cannot lawfully be excluded or limited.
- 13.4 Subject to Clause 13.3 above, the Service Level Arrangements state the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.
- 13.5 Any breach of the Party's responsibilities under Clause 10 shall be limited to £500,000 in the aggregate, which shall count towards the cap set out in Clause 13.6.
- 13.6 The Parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to one hundred and twenty five percent (125%) of the price paid for the Services during the twelve (12) months preceding the date on which the claim arose.
- 13.7 Except as expressly and specifically provided in this Agreement:
  - (a) neither Party shall have any liability for any losses or damages which may be suffered by the other Party (or any person claiming under or through that Party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:



- (i) special damage even if the other Party was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill and reputation;
- (vi) loss or corruption of data.

13.8 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Managed Services, or any actions taken by the Supplier at the Customer's direction; and
- (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

13.9 Any indemnity set out in this Agreement shall not apply unless the Party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge and gives the other Party full opportunity to control the response to and the defence of such claim; including without limitation, the right to accept or reject settlement offers and to participate in any litigation provided that in no event shall the indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.

13.10 The Supplier shall maintain in force the following insurance policies:

- (a) Public Liability Insurance Policy - limit £5 million per claim;
- (b) Professional Indemnity Insurance Policy - limit £1 million per claim;
- (c) Employers Liability Policy – limit £10 million per claim;
- (d) Cyber Insurance- limit £25,000 in the aggregate.

## 14. CHANGE ORDERS

14.1 Either Party may request changes to any Services (in each case, a "Change Order"). Any Change Order shall be made in writing and sent to the Customer Representatives or Supplier representative (as appropriate) and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.

- 14.2 Where the Parties propose a Change Order the Supplier shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Charges as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of this Agreement. The Customer shall notify the Supplier whether it accepts or reasonably rejects the Change Order within five working days of its receipt of the written estimate.
- 14.3 Until such time as a Change Order has been agreed to by the Parties, the Parties shall continue to perform their respective obligations under the Service Specification without taking into account the Change Order. Once duly agreed by both Parties, the Change Order shall be deemed incorporated into Agreement and Service Specification and the Supplier shall commence performance of the Change Order accordingly.
- 14.4 Neither Party shall be required to accept any Change Order made by the other Party and shall not be bound by the Change Order unless it has been agreed in writing as set out above.
- 14.5 Unless otherwise agreed in writing, Supplier shall be entitled to charge the Customer at Supplier's then current Rates for investigating, reporting on and, if appropriate, implementing any Change Order requested by the Customer.

## **15. CONFIDENTIALITY**

- 15.1 Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by the relevant Service Specification.
- 15.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 15.1.
- 15.3 The obligations of confidentiality set out in this Clause 15 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the disclosing Party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving Party without use of or reference to the Confidential Information.

## **16. TERM AND TERMINATION**

- 16.1 This Agreement and each Service Specification shall commence on the Commencement Date and shall remain in full force for the Term unless otherwise agreed by the Parties or earlier terminated in accordance with the term of this Agreement. Thereafter, this

Agreement and each Service Specification shall continue to automatically renew for a Subsequent Term, unless a Party gives written notice to the other Party, not later than ninety (90) days before the end of the Term or the relevant Subsequent Term, to terminate this Agreement.

16.2 Without prejudice to any rights that the Parties have accrued under this Agreement or any of their respective remedies, obligations or liabilities, a Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

- (a) the Customer breaches its obligations in Clauses 5.6 and 5.7;
- (b) the Supplier commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of forty five (45) days after being notified to do so;
- (c) the other Party breaches any of the terms of Clause 10, Clause 15 or Clause 20;  
or
- (d) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

16.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

16.4 On termination of this Agreement for any reason:

- (a) the Supplier shall immediately cease provision of the Services;
- (b) the Customer shall pay any and all invoices and sums due and payable up to and including the date of termination including (1) all remaining amounts owing up to the end of the Term or the Subsequent Term (as applicable); (2) any Licence Fees as set out under Clause 12.1; and (3) any termination fees that the Supplier incurs from any of its Third Parties as a consequence of such early termination. The Supplier shall use reasonable endeavours to mitigate any loss but the Customer acknowledges and agrees that any Third-Party fees may not be mitigated by the Supplier and the Customer shall not hold the Supplier responsible if it incurs full termination fees; and
- (c) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.

16.5 Save as provided in Clause 16 or elsewhere in this Agreement, or by mutual consent and on agreed terms, or due to a Force Majeure event, neither Party shall be entitled to terminate a Service Specification. Termination of a Service Specification shall not by default, terminate other Service Specifications nor this Agreement.

- 16.6 Termination of any Service Specification shall be without prejudice to any other rights which any party may have under any other Service Specification.
- 16.7 Upon termination of this Agreement or a specific Service Specification for any reason the Supplier will provide to the Customer and / or to any new supplier selected by the Customer (the “**Successor Service Provider**”) such assistance as reasonably requested by the Customer in order to effect the orderly transition of the applicable Services, in whole or in part, to the Customer or to Successor Service Provider (such assistance shall be known as the “Termination Assistance Services”) during any period of notice of termination (the “Termination Assistance Period”). Any services required by the Customer for the transition of Services during the Termination Assistance Period shall be provided by the Supplier at its then current time and materials fee rate for such period of time as shall be mutually agreed. Such Termination Assistance Services may include:
- (a) developing a plan for the orderly transition of the terminated Services from the Supplier to the Customer or the Successor Service Provider; and
  - (b) such other activities upon which the Parties may agree including any non proprietary documents to enable a Successor Service Provider to continue to provide services.
- 16.8 Upon a termination of the Agreement or a specific Service Specification (as applicable), the Supplier shall only retain the Customer Data for a maximum period of 3 months from the date of termination and may delete all such copies of its Customer Data after the 3 months period has ended.
- 16.9 The provisions of Clauses 7,8,10,11,12,13,15,16, 17,18 and 20 shall survive termination of any Service Specification or this Agreement.

## **17. STAFF TRANSFER AND NON-SOLICITATION**

- 17.1 It is not intended that any staff be transferred from the Supplier to the Customer or from the Customer to the Supplier pursuant to this Agreement or that any ‘relevant transfer’ occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). In the event that the Parties agree that TUPE does apply at either entry and/or exit then the provisions [set out here](#) shall take priority over this Clause 17.1.
- 17.2 Neither Party shall solicit the other Party’s staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of 9 months thereafter. For the purposes of this Clause ‘solicit’ means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.
- 17.3 In the event that either Party is in breach of Clause 17.2 above then the Party in breach shall pay to the other by way of liquidated damages an amount equal to 50% per cent of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to either Party’s ability to seek injunctive relief.

17.4 The Parties hereby acknowledge and agree that the formula specified in Clause 17.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

## 18. RELIEF EVENTS

Subject to Clause 13.3, and notwithstanding any other provision of this Agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

## 19. FORCE MAJEURE

19.1 The Supplier shall have no liability to the Customer under this Agreement and the Customer shall have no obligation to pay the Fees if the Supplier is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control except to the extent that the Supplier could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of this Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), including strikes, computer viruses and malware, pandemics, epidemics, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of the Supplier), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a Force Majeure Event), provided that:

- (a) the Customer is notified of such an event and its expected duration; and
- (b) the Supplier uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for four (4) weeks or more, the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other Party.

19.2 Both Parties agree and acknowledge that upon the UK ceasing to become a member of the European Union ("**Brexit Event**"), that such Brexit Event shall not qualify as a Force Majeure Event.

## 20. ANTI-BRIBERY

20.1 The Supplier shall:

- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 ("**Relevant Requirements**");
- (b) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.

- 20.2 The Supplier shall procure that any person associated with the Supplier, who is performing services in connection with this Agreement, adheres to terms equivalent to those imposed on the Supplier in this Clause 20 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 20.3 For the purpose of this Clause 20, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 20 a person associated with the Supplier includes any subcontractor of the Supplier.

## **21. WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **22. SEVERANCE**

- 22.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 22.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

## **23. ENTIRE AGREEMENT AND AMENDMENT**

- 23.1 This Agreement (and its references to website address to further documentation, the Licence Agreements, the Service Specifications and the Customer Agreement constitutes the entire Agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and Agreements between them relating to its subject matter.
- 23.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 23.3 Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

23.4 No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

## 24. ASSIGNMENT

The Customer shall not without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed) assign or, transfer or charge or deal in any other manner with either the benefit or the burden of this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

## 25. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## 26. THIRD-PARTY RIGHTS

This Agreement is made for the benefit of the Parties, to it and (where applicable) their successors and permitted assigns, and Microsoft (in respect of enforcing the terms of the CSP Agreement) and is not intended to benefit or be enforceable by anyone else.

## 27. NOTICES

27.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.

27.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

27.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall include e-mail.

## 28. DISPUTE RESOLUTION

28.1 If a dispute arises under this Agreement ("**Dispute**"), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process ("**Dispute Notice**").

- 28.2 If the Parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five Business Days thereafter):
- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement ("**Designated Representative**"); and
  - (b) notify the other Party in writing of the name and contact information of such Designated Representative.
- 28.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party will be honoured.
- 28.4 If the Parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Designated Representatives, then either Party may proceed with any other available remedy.

## **29. MARKETING**

- 29.1 Both Parties agree to reasonably cooperate in connection with the creation of mutually beneficial marketing communications, which shall include, at a minimum, a press release, case study and a reference to Customer on Supplier's website, provided that in no event shall either Party use the name, trademarks or other proprietary identifying symbols of the other Party without such Party's prior written consent, which consent shall not be unreasonably withheld or delayed.

## **30. GOVERNING LAW AND JURISDICTION**

- 30.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be exclusively governed by and construed in accordance with the law of England.
- 30.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **SCHEDULE 1 - SUPPLY OF GOODS**

### **1. The Goods**

- 1.1 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods



described in them. They shall not form part of the Agreement or have any contractual force.

- 1.2 To the extent that the Goods are to be manufactured in accordance with the relevant section of a Service Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Service Specification. This paragraph 1.2 shall survive termination of the Agreement.
- 1.3 The Supplier reserves the right to amend the Service Specification if required by any applicable statutory or regulatory requirements.

## **2. Delivery**

- 2.1 The Supplier shall endeavour to deliver Goods to the agreed delivery location on the agreed delivery date.
- 2.2 If the Supplier fails to deliver Goods by the relevant delivery date after being given a reasonable opportunity to remedy such delay, except to the extent that such delay is due to a third party for which the Supplier shall have no liability, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by:
- (a) a delay from the manufacturer, third party supplier or other third party;
  - (b) a Force Majeure Event; or
  - (c) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 2.3 If ten (10) Business Days after the day on which the Supplier attempted to make delivery of Goods the Customer has not taken delivery of those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods, or charge the Customer for any shortfall below the price of the Goods.
- 2.4 The Supplier may deliver Goods by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

### 3. Warranties

- 3.1 Subject to paragraph 3.4, the Supplier warrants that, for a period of twelve (12) months from the date of delivery ("**Warranty Period**"), the Goods shall:
- (a) conform in all material respects with the relevant section of the Service Specification;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - (d) be fit for any purpose held out by the Supplier.

- 3.2 Subject to paragraph 3.3, if:
- (a) the Customer gives notice in writing to the Supplier during the Warranty Period, within five (5) Business Days of discovery that some or all of the Goods do not comply with the warranties set out in paragraph 3.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full.

- 3.3 The Supplier shall not be liable for the Goods' failure to comply with the warranties set out in paragraph 3.1 if:
- (a) the Customer makes any further use of such Goods after giving notice of defects in accordance with paragraph 3.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Service Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from the Service Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 3.4 Insofar as the Goods comprise or contain goods or components which were not manufactured or produced by the Supplier, the Customer shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer and is permitted to pass onto the Customer.

- 3.5 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in paragraph 3.1 is as set out in this paragraph 3.
- 3.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- 3.7 The terms of the Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

#### **4. Title and risk**

- 4.1 Risk in Goods shall pass to the Customer on completion of unloading the Goods at the agreed delivery location.
- 4.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.
- 4.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 16.2(d); and
  - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 4.4 The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in paragraph 4.3, and to recover any Goods in which property has not passed to the Customer.