

Master Services Agreement

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Master Services Agreement

Background

- (A) The Supplier has developed and will provide the Services (as defined below).
- (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.

1. Interpretation

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

Acceptable Use Policy: means the acceptable use policy notified to the Customer by the Supplier and as amended from time to time.

Acceptance Criteria: means the acceptance criteria as specified in Clause 11.2, referred to in a Quote or as otherwise agreed by the Parties expressly in writing after the date of the relevant Quote against which the Acceptance Tests are to be carried out to determine whether the Deliverables or Services (as the case may be) meet the relevant Quote, are satisfactory and ready to be invoiced.

Acceptance Tests: means the acceptance tests as specified or referred to in a Quote or as agreed between the Parties in writing, to be undertaken to determine whether the Deliverables or Services (as the case may be) meet the Acceptance Criteria.

Agreement: means the terms and conditions in this agr16. Ex,clusions, limitations of liability, warranties and indemnities 42and the Service Catalogues, and any other documents agreed between the Parties.

Applicable Data Protection Laws: means:

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

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

Assumptions: has the meaning given in Clause 9.4.

Authorised User: means any individual who is entitled to use of the Third Party Services, Subscription Services and/or Services under the Agreement.

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 the 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 Customer or any of its agents or contractors.

Cap: is the total monthly volume of Products which the Customer is permitted to use.

Change Request: means any request to alter the Services pursuant to this Agreement as set out in Clause 16.

Commencement Date: means the date of this Agreement unless otherwise specified in the relevant Quote.

Commissioner: the Information Commissioner (see section 114, Data Protection Act 2018).

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.

Consumption: refers to the subscription licences that are billed based on actual usage.

Consumption Subscriptions: refers to the licences that are billed based on actual usage in the preceding month.

Customer: the customer as identified in the Quote.

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 Personal Data: any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

Customer Site: means the locations where the Services are provided as identified in the Quote or other document, as agreed between the Parties.

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.

Customer 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 Customer 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.

Cyber-Attack: a non-physical attack on the Supplier's System or any part of it, not being any form of inherent internal shortcoming, but deliberately instigated by any person directly or indirectly (including through the actions or omissions of Customer personnel) to gain unauthorised access to electronic data and software on the Supplier's System or any part of it, including malware (malicious software, such as spyware, ransomware, viruses, and worms), phishing attack, man-in-the-middle attack, denial-of-service attack, SQL injection, zero-day attack/exploit and DNS tunnelling.

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).

Deposit: means the deposit amount (if any) set out in the relevant Quote.

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.

Dispute Resolution Procedure: the procedure described in Clause 30.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

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

Force Majeure: has the meaning given in Clause 21.1.

Go-live Date: the date specified in the relevant Quote or as otherwise agreed between the Parties in writing.

Goods: the goods or equipment to be purchased by the Customer and provided as part of the Services (or any part of them), as set out in the relevant Quote in the relevant section or as otherwise agreed in writing between the Parties.

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.

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.

Initial Term: means the period commencing on the Commencement Date and ending on the date three (3) years thereafter unless otherwise specified in the relevant Quote. For the avoidance of doubt, each Quote will have its own Term, which will extend the Initial Term of the Agreement if the term of the Quote is longer than the Initial Term of the Agreement.

Intellectual Property Rights or IPR: any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including software, patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of 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 now or in the future, 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 Quote.

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

Managed Services: the hosting and support service described in the relevant Quote is to be performed by the Supplier in accordance with this Agreement.

Minimum Users: means the minimum number of Authorised Users stated in the relevant Quote if applicable.

Normal Business Hours: 8.30 am to 5.30 pm local UK time on Business Days unless otherwise stated in the applicable Quote or in a Schedule, Service Definition or Service Catalogue.

Out of Scope: means those out of scope services specified as such in a Quote and/or any Schedule, together with any other services which are not detailed in the relevant Quote.

Products: means the Microsoft or other Third Party Services, tools, software, hardware, or professional support or consulting services provided under the terms of the Customer Agreement, applicable Licence Agreement or as otherwise agreed between the Parties.

Professional Services: the service described in the relevant Quote to be performed by the Supplier in accordance with this Agreement.

Purpose: the purposes for which the Customer Personal Data is processed, as set out in the applicable Quote.

Quote: the specification for the Services as set out under separate cover and agreed between the Parties.

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

Relief Events: the following events:

- (a) any failure by the Customer to comply with its obligations under the Agreement;
- (b) any error or malfunction in the Business Systems or any other software, equipment, 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, equipment, 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 the Agreement; or
- (d) any of the causes or events set out in Clause 13.9.

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 any Quote.

Schedules: means the schedule relating to a specific Service referred to in the applicable Quote, as provided to the Customer under separate cover.

Service Level Arrangements: the service level arrangements set out in the relevant Quote and/or Schedules (if applicable) or as otherwise agreed in writing between the Parties.

Services: means the provision of the Goods, Managed Services and/or the Professional Services, including consulting, advisory, integration or technical services performed by the Supplier under a Quote or otherwise agreed in writing between the Parties.

Service Catalogue: the service catalogue relating to each Service as provided to the Customer under separate cover.

Service Definition: the service definition relating to each Service as provided to the Customer under separate cover.

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

Subscription Services: means a right to use the Product(s) for a defined term.

Subsequent Term: means twelve (12) months commencing on the last day of the Initial Term or previous Subsequent Term.

Supplier or LIMA: Lima Networks Ltd (registration number 03475103) whose registered office is at 6 Digital Park, Pacific Way, Salford, Manchester, M50 1DR.

Supplier Equipment: means any equipment made available to the Customer by the Supplier to enable the Customer to access the Services, including thin client computer terminals and laptops.

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 Initial Term and any Subsequent Term, as applicable.

Third Party Supplier: any third party that supplies Third Party Services to the Supplier and/or the Customer (as the case may be) during the provision of the Services.

Third Party Services: any services, goods, code or software programs written or provided by a Third Party Supplier which are used by the Customer during the provision of the Services.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any provisions replacing or amending those provisions.

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

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.

User Subscriptions: means the user subscriptions purchased by the Customer pursuant to a Quote which entitle Authorised Users to access and use the Subscription Services and/or Third Party Services (as the case may be) in accordance with this Agreement.

Variations: any variations made through the Variation Agreement, a template of which is found here.

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 Schedules, the Quotes, the Service Definitions, the Service Catalogues, the Licence Agreement and Customer Agreement (including any changes or variations to each of the Clauses, the Schedules, the Quotes, the Service Definitions, the Service Catalogues, the Licence Agreement and Customer Agreement), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:

(a) the Variations;

- (b) the Quotes;
- (c) the Schedules to the extent applicable to the Services;
- (d) the Licence Agreements and Customer Agreement to the extent applicable to the Services;
- (e) the Clauses of this Master Services Agreement.
- (f) the Service Definitions; and
- (g) the Service Catalogues.

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 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 (ii) 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.

2.3 No addition to, variation of or other amendment or purported amendment to any Quote 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.

2.4 Any quotation or proposal given by the Supplier is for budgetary purposes until financial and technical validation and shall not constitute an offer. Unless otherwise stated in the relevant Quote, for:

- (a) the supply of Goods, it is only valid for a period of seven (7) Business Days;
- (b) Professional Services and Managed Services, it is only valid for a period of thirty (30) days,

from its date of issue unless otherwise agreed by the Supplier in writing and shall only become binding upon the signing of a Quote.

3. Supply of goods

3.1 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.

3.2 To the extent that the Goods are to be manufactured in accordance with the Customer's specification, 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 such specification.

3.3 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Goods which are required to conform with any applicable legislation or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

3.4 If the Supplier cannot supply the Goods ordered by the Customer, the Supplier reserves the right to offer Goods of equal or superior quality at no extra cost. In such a case, if the Customer does not wish to accept the alternative Goods offered, it may cancel the order and require the refund of any money paid to the Supplier in respect of that order, including carriage charges. This shall be the sole remedy of the Customer in these circumstances.

3.5 Where the Goods are being supplied by a Third Party Supplier, they will be supplied subject to any terms and conditions of sale and returns policy relating thereto by the relevant manufacturer and/or Third Party Supplier.

3.6 Prices

(a) Prices for Goods in the Supplier's stock ready to be shipped will be established at the time the order is accepted by the Supplier. If the Customer places an order for Goods not in stock at the time of order (a "Backorder") or the Customer places an order for scheduled delivery, such orders shall be irrevocable and the price for such Goods shall be the price established at the time the Backorder or scheduled delivery is accepted by the Supplier.

(b) Notwithstanding the foregoing, the Supplier reserves the right to increase its prices after acceptance of a Backorder or scheduled delivery due to an increase in its Third Party Supplier's price to the Supplier or an increase in direct costs to which the Supplier becomes subject (including without limit costs resulting from currency fluctuation) but the Supplier shall only increase its price by such level as is necessary to reflect such increases.

3.7 Delivery

- (a) The Supplier shall endeavour to deliver Goods to the agreed delivery location on the agreed delivery date, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the relevant Quote. Time is not of the essence as to the delivery of the Goods, and the Supplier is not in any circumstances liable for any delay in delivery, however caused.
- (b) Delivery shall be made during Normal Business Hours (excluding bank or public holidays). The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's request.
- (c) The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Goods and for the provision of all necessary access and facilities reasonably required to deliver and install the Goods (if applicable). If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.
- (d) The Customer shall be deemed to have accepted the Goods when the Customer has had five (5) days to inspect it after delivery.
- (e) 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 by 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:
 - (i) a delay from the manufacturer, Third Party Supplier or other third party;
 - (ii) an event of Force Majeure; or
 - (iii) 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.
- (f) 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.
- (g) 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.

3.8 Warranties

- (a) Subject to Clause 3.8(d), the Supplier warrants that, for such period as is offered by the manufacturer (if any) ("Warranty Period"), the Goods shall:

- (i) conform in all material respects with the relevant section of the applicable Quote;
 - (ii) be free from material defects in design, material and workmanship; and
 - (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- (b) Subject to Clause 3.8(c), if:
- (i) 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 Clause 3.8(a);
 - (ii) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (iii) 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.
- (c) The Supplier shall not be liable for the Goods' failure to comply with the warranties set out in Clause 3.8(a) if:
- (i) the Customer makes any further use of such Goods after giving notice of defects in accordance with Clause 3.8(b);
 - (ii) 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;
 - (iii) the defect arises as a result of the Supplier following any drawing, design or Quote supplied by the Customer;
 - (iv) the Customer alters or repairs such Goods without the written consent of the Supplier;
 - (v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (vi) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- (d) 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.
- (e) The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in Clause 3.8(a) is as set out in Clause 3.7(b).

(f) 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.

(g) The terms of the Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

3.9 Title and risk

(a) Risk in Goods shall pass to the Customer on completion of unloading the Goods at the agreed delivery location.

(b) Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.

(c) Until title to the Goods has passed to the Customer, the Customer shall:

(i) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(iv) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 18.3(d) of the Agreement; and

(v) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

(d) 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 Clause 3.9(c) and to recover any Goods in which property has not passed to the Customer.

3.10 Cancellation

Notwithstanding Clause 3.5, once an order for Goods has been accepted by the Supplier, no order may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall indemnify the Supplier in full against all reasonable losses, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

3.11 Return of Goods

- (a) All returns of Goods can only be made, and will only be accepted by the Supplier if they comply with this Clause 3.11.
- (b) Subject to the provisions of this Clause 3, Goods may only be returned in accordance with the Supplier or Third Party Supplier's terms and conditions or returns policy.
- (c) Prior authorisation for the return of any Goods must be obtained from the Supplier or Third Party Supplier via such method as the Supplier may advise. Such returns authorisation shall be given at the Supplier's or Third Party Supplier's sole discretion.
- (d) Goods that are authorised for return must be returned by the Customer in accordance with the applicable return instructions provided by the Supplier or Third Party Supplier.
- (e) The Supplier or the Third Party Supplier reserves the right to levy a reasonable administration charge in respect of returns.

4. Managed services

4.1 The Supplier will provide the Managed Services in accordance with the applicable Quote and the terms of this Agreement with all due care, skill and ability during the Term unless earlier terminated for any reason.

4.2 By submitting an order through a Quote, the Customer:

- (a) represents that any subscription commitments and requirements disclosed are complete and accurate in all respects;
- (b) agrees to pay the Supplier for all orders it submits for Products and the Managed Services; and
- (c) agrees to the terms of the Agreement and the applicable Quote.

4.3 The Customer shall remain responsible for the use of the Managed Services under its control.

4.4 The Customer agrees and accepts that, and the Supplier gives no warranty or representation that, the Supplier can prevent a Cyber-Attack, and that in relation to the elements of the Supplier's System the Customer controls or can control, the Customer has sole liability for protecting those elements against Cyber-Attack.

4.5 The Customer must use all reasonable endeavours to ensure it does not (and the Customer personnel do 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 Cyber-Attack. In the event of any Cyber-Attack, the Supplier will work with the Customer to alleviate the situation as quickly as possible, but shall have no liability or responsibility for any liability incurred by the Customer as a result of any Cyber-Attack. The Parties shall discuss and agree on appropriate action (including suspending the Managed Services).

4.6 The Customer shall not provide the Managed Services to third parties without the prior written consent of the Supplier.

4.7 The Customer acknowledges that certain conditions outside of the Supplier's control may adversely impact the ability of the Supplier to perform the functions of the Managed Services. Examples of such conditions include:

- (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; and/or

(d) network connectivity issues between Local System Components and its third party's servers.

4.8 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 Request.

4.9 If the Supplier breaches its obligations in Clause 4.1, 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.

4.10 The Supplier is not liable for defects in, or delays related to, the Products.

5. responsibilities of the supplier

5.1 The Supplier shall:

- (a) provide the Services in accordance with the terms of this Agreement and the relevant Quote;
- (b) use its commercially reasonable endeavours to complete any Deliverables set out under any Quote, but any such dates shall be estimates only;
- (c) commit sufficient resources to the provision of the Services to enable their delivery in accordance with this Agreement and any Quote;
- (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 Quote;
- (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 Licence Agreement, the Customer Agreement or any Quote; 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.

5.2 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.

5.3 Unless otherwise set out in a Quote, 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 its 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.

5.4 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 and shall not be held liable for the actions and or omissions of any other third party including but not limited to Microsoft (whereby the Customer will have a direct contract in place with Microsoft through the Customer Agreement).

5.5 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.

5.6 In relation to the Managed Services specifically and notwithstanding the Supplier's obligations under Clause 5.1, 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 the integrated knowledge base and how-to guides to reduce the time to issue resolution;
- (d) undertake account reviews at such intervals as are agreed between the Parties, 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.

5.7 The Supplier shall be under no obligation to provide the Managed Services to the Customer in the following circumstances (unless specified under the relevant Quote);

- (a) unauthorised use of the Services by the Customer or use otherwise than in accordance with this Agreement;
- (b) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
- (c) providing any other services not covered herein;
- (d) training; and
- (e) 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.

6. Responsibilities of customer

6.1 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.

6.2 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 the authority to commit the Customer on all matters relating to the relevant Service.

6.3 The Customer agrees and acknowledges the terms of the applicable Licence Agreements and the terms of the Customer Agreement shall form part of the Agreement. For the avoidance of doubt, in the event the applicable Licence Agreements and/or the Customer Agreement is not applicable to the Services being received or delivered by the Supplier to the Customer under the Agreement, such agreements shall not apply.

6.4 The Customer shall:

- (a) adhere to the Acceptable Use 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) adhere to the dates scheduled for provision of Services by the Supplier to the Customer as stated in the applicable Quote or otherwise agreed between the Parties in writing. In the event the Customer wishes to reschedule or cancel the dates for the provision of Services, liquidated damages (“Liquidated Damages”) will become payable from the Customer to the Supplier on the following basis:
 - (i) if dates are changed or cancelled at the Customer’s request more than fourteen (14) days before the scheduled start date, no Liquidated Damages are payable;
 - (ii) if dates are changed or cancelled between seven (7) days and fourteen (14) days before the scheduled start date, Liquidated Damages equivalent to fifty per cent (50%) of the Fees for the Services to be provided at that time will be payable;
 - (iii) if dates are changed or cancelled less than seven (7) days before the scheduled start date, Liquidated Damages equivalent to one hundred per cent (100%) of the Fees for the Services to be provided at that time will be payable;

- (e) 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;
- (f) allow the Supplier or its designated subcontractors, global admin access to the Customer's relevant servers and networking systems for the duration of the Agreement;
- (g) where a Microsoft Cloud service is deployed/utilised within the project (Azure, Enterprise Mobility Suite or Office365) the Supplier will be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR) and Digital Partner of Record (DPOR) and/or Partner Admin Link (PAL) and/or Admin on Behalf of (AOBO) for a minimum of twelve (12) months from project completion date;
- (h) in respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that the Customer does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Customer the amounts directly, and the Customer shall follow the payment terms in this Agreement;
- (i) take good care of the Supplier's Equipment to prevent damage or loss to such equipment arising from misuse by Customer personnel in accordance with any applicable Supplier policy or instructions of the Supplier from time to time;
- (j) maintain adequate policies of insurance which provide cover for the Supplier's Equipment when located at the Customer Site against the normal risks which the Customer could reasonably be expected to insure against in respect of its own equipment;
- (k) provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
- (l) provide all information and make available all resources as reasonably requested by Supplier in the execution of its obligations under this Agreement;
- (m) use all reasonable efforts to follow the reasonable instructions of Supplier support personnel with respect to the resolution of defects;
- (n) gather all relevant information prior to requesting assistance in respect of any defects, including a 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
- (o) agree that if, in the course of performing the Services, it is reasonably necessary for the Supplier's performance of its obligations under a Quote for the 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.

6.5 The Customer shall (unless otherwise specified in any relevant Quote 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 seven (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 any Quote 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.

6.6 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this Clause.

6.7 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) 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 any Quote 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.

6.8 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 fourteen (14) 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 any Quotes 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.

8. Project organisation

8.1 If requested in writing by the Customer or specified in a Quote, 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 16 and to discuss the Service Level Arrangements.

8.2 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 on 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.

9. User subscriptions

9.1. The Supplier grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Third Party Services and/or Subscription Services (as applicable) during the Term solely for the Customer's internal business operations.

9.2. In relation to the Authorised Users, the Customer undertakes that:

- (a) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Third Party Services and/or Subscription Services;
- (b) each Authorised User shall keep a secure password or other biometric authentication for their use of the Third Party Services and/or Subscription Services (as the case may be) and where a password is used, ensure that such password shall be changed no less frequently than monthly and that each Authorised User shall keep their password confidential;
- (c) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five (5) Business Days of the Supplier's written request from time to time;
- (d) it shall permit the Supplier to audit the Customer's use of the Third Party Services and Subscription Services for each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- (e) if any of the audits referred to in Clause 8.2(d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- (f) if any of the audits referred to in Clause 8.2(d) reveal that the Customer has underpaid Fees to the Supplier and/or individuals are using the Third Party Services who are not Authorised Users, without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment within ten (10) Business Days of the date of the relevant audit or upon request by the Supplier, promptly disable access to such individuals.

9.3. The Customer may, from time to time during any Term:

- (a) unless otherwise specified in a Schedule or in writing, request that the User Subscriptions decrease, providing it does not decrease below the Minimum Users unless in accordance with Clause 8.4 or as otherwise agreed by the Supplier; or
- (b) request for more Authorised Users at any point in excess of the User Subscriptions, by giving the Supplier written notice, subject to the following:

(i) The Supplier shall evaluate the Customer's request for additional User Subscriptions and grant or refuse the request (in its sole discretion).

(ii) If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within thirty (30) days of the date of the Supplier's invoice, pay to the Supplier the relevant Fees for such additional User Subscriptions at the relevant price at the time of the request and, if such additional User Subscriptions are purchased by the Customer part way through the Term, such fees shall be pro-rated for the remainder of the Term.

9.4. Unless otherwise set out in a Quote, the Supplier may adjust the Minimum Users on the anniversary of the Commencement Date to reflect any adjustments made to the User Subscriptions in accordance with this Clause 8 over the previous twelve (12) months or as otherwise agreed between the Parties.

10. Price and payment

10.1 The Customer shall pay the Deposit (if applicable) and Fees for the Services (including any Third Party Services fees) as more fully set out in the relevant Quote. Where these are based on the number of User Subscriptions and/or Consumption, such Fees shall be variable upon the terms set out in the relevant Quote. For the avoidance of doubt, in the event the Customer delays the Go-live Date (which falls outside of the Liquidated Damages) or has not conducted its Acceptance Testing in accordance with Clause 11, the Supplier may charge the Customer for such delays in accordance with its Rates.

10.2 If no Fee is quoted, the Fee shall be calculated in accordance with the Supplier's Rates set out in the relevant Quote as amended from time to time in accordance with this Agreement.

10.3 Clause 9.5 shall apply if the Services are to be provided on a time-and-materials basis. Clause 9.7 shall apply if the Services are to be provided on a Consumption basis. The remainder of this Clause 9 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.

10.4 Where a Fee has been quoted, this is a best estimate based on the information given to the Supplier by the Customer and/or which is available at that time and may be based on a number of assumptions set out in the relevant Quote and/or any Schedule ("Assumptions"). If it materialises that in the Supplier's reasonable opinion, the information provided and/or Assumptions made are incorrect, inaccurate or have changed and/or that the proposed scope of Services is not feasible, the Supplier shall be entitled to charge (at the Supplier's current Rates) the Customer for any Out of Scope Services or other additional Services provided to those detailed in the relevant Quote together with all related costs and expenses incurred by the Supplier.

10.5 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 relevant Quote; and
- (c) the Supplier shall complete the relevant time recording systems to calculate the Fees for each invoice charged on a time and materials basis.

10.6 The Supplier shall invoice the Fees in accordance with the payment intervals stated in the relevant Quote. Save where other payment terms are set out in the relevant Quote, all Fees will be payable by direct debit. The Customer shall provide the Supplier with valid up-to-date and complete payment information and direct debit authority.

10.7 Subscriptions:

- (a) Fixed Term Subscriptions

- (i) Products sold under fixed term Subscriptions are sold for a term as specified in the relevant Quote. The relevant Quote shall specify if such Subscriptions are to be billed on a monthly or annual basis.
- (ii) Any subsequent adjustments to Subscriptions (e.g. adding users) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.
- (b) For all Consumption Subscriptions, the Customer agrees and acknowledges that:
 - (i) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the relevant Quote, Licence Agreement or Customer Agreement and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
 - (ii) Consumption Subscriptions will be billed at the next billing cycle and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle, except when prices decrease or increase. The unit price for a User Subscription sold on a consumption basis may change during the subscription period.
 - (iii) it shall pay all such usage and is responsible for monitoring its consumption needs;
 - (iv) the Customer further acknowledges and accepts that the Supplier may establish or install a technical lock or barrier (the "Barrier"), which prevents the Customer from utilisation of a Product in excess of the Cap;
 - (v) for the avoidance of doubt, if, in spite of Clause 9.7(b)(iv), the Customer utilises a Product in excess of the Cap, the Customer shall pay to the Supplier fees and other expenses in accordance with its actual use. Any dysfunction or non-use of the Barrier shall not release the Customer from paying fees and costs in accordance with its actual utilisation of a Product. The Supplier has no responsibilities with regard to preventing the Customer from utilisation in excess of the Cap.

10.8 The Fees exclude (unless otherwise agreed and set out in a Quote):

- (a) 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 seven hundred and fifty pounds (£750) in the aggregate per day and shall be payable by the Customer in accordance with Clause 9.9; and
- (b) unless otherwise set out in a Quote, the costs of packaging, insurance and transport of the Goods.

10.9 The Customer shall pay each undisputed invoice for the Fees and Expenses in full and cleared funds (without deduction or set-off) within thirty (30) days of the date of such invoice unless otherwise agreed in writing by the Supplier or unless otherwise set out in a Quote.

10.10 All payments by the Customer hereunder shall be in United Kingdom pound sterling unless otherwise agreed or set out in the relevant Quote and shall be paid to the Supplier's bank account as advised by the Supplier to the Customer in writing.

10.11 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.

10.12 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 Quote.

10.13 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 ten (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 four percent (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.

10.14 The Customer shall not be able to dispute any amounts which have been paid by the Customer after a period of three (3) months has elapsed from the date of the invoice.

10.15 The Supplier shall not be obliged to provide any of the Services while any duly issued invoice(s) remain unpaid under any Quote, 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.

10.16 Subject to Clause 9.18 below, the Fees relating to the provision of Services shall increase on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding twelve (12) month period.

10.17 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 Party Suppliers upon seven (7) days' notice and/or in line with the terms of the Licence Agreement and/or Customer Agreement.

10.18 Notwithstanding and subject to Clauses 9.16 and 9.17, the Supplier reserves the right, on giving the Customer thirty (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 thirty (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.

10.19 The Supplier may change credit or payment terms for unfulfilled orders if, in the Supplier's reasonable opinion, the Customer's financial condition, previous payment record, or relationship with the Supplier merits such a change.

11. Warranties and service levels

11.1 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 license to the Supplier and any of its subcontractors, any materials reasonably necessary for the fulfilment of all its obligations under the 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.

11.2 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 the 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.

11.3 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. The 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.

11.4 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 default, 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 relevant Quote and to the extent it reasonably can.

11.5 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 Authorised 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.

11.6 Unless otherwise agreed or set out in a Quote (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.

11.7 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.

11.8 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.

11.9 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.

11.10 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 endeavours 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.

11.11 The Service Level Arrangement 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).

11.12 The Supplier shall not, in any circumstances, be liable under its obligations in this Clause 10 if it can demonstrate that any failure of the Services was caused or contributed to by any Relief Event.

11.13 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error-free.

11.14 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.

12. Acceptance of the professional services

12.1 The relevant Quote shall specify the Deliverables or Services (as the case may be) that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.

12.2 In relation to any Acceptance Testing:

(a) the Customer shall have a reasonable period of time, up to five (5) Business Days unless otherwise specified in a Quote, from the Supplier's delivery of each Deliverable or Service under the relevant Quote (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 or Service 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 or Service which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period (as defined in Clause 11.2(a)) if any of the Deliverables or Services 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 or Service, 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 9, 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 or Services 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 11.2(d) below;

(c) if:

(i) the Customer does not provide any written comments in the initial period described in Clause 11.2(a) above;

(ii) commences live running of the whole or part of such deliverable other than in the course of undertaking Acceptance Testing; or

(iii) if the Deliverable or Services are found to conform with the relevant Quote;

then in each case the Service or Deliverable shall be deemed accepted from the date of the notification by the Supplier pursuant to Clause 11.2(a).

(d) 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 Request 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.

(e) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the 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 (i) at its discretion, provide a substitution that offers equivalent functionality which shall not have a materially detrimental impact on the relevant Deliverable or Service, or (ii) terminate work on that specific Deliverable.

(f) If the Supplier terminates work on any Deliverable in accordance with Clause 11.2(e), the 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. If the Supplier is unable to correct the non-conformity within thirty (30) Business Days, either party may terminate the Agreement without further liability to the other.

13. Data protection

13.1 For the purposes of this Clause 12, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Applicable Data Protection Laws.

13.2 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 12.2 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.

13.3 The Parties have determined that, for the purposes of Applicable Data Protection Laws, the Supplier shall process the personal data set out in the applicable Quote, as a processor on behalf of the Customer.

13.4 Without prejudice to the generality of Clause 12.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer's Personal Data to the Supplier for the duration and purposes of this Agreement.

13.5 In relation to the Customer Personal Data, the data processing schedule sets out 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. In the event that the details in Schedule 1 are not accurate, any changes will be identified in the applicable Quote.

13.6 Without prejudice to the generality of Clause 12.2, the Supplier shall, in relation to Customer Personal Data:

- (a) process the Customer Personal Data only on the documented instructions of the Customer, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall 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 on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
- (b) implement appropriate the technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are 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;
- (c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;

- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this Clause 12.6(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) with not less than four (4) weeks' notice, at the Customer's cost, and provided that the Customer shall not make more than one request in any rolling twelve (12) month period, make available to the Customer all information necessary to demonstrate compliance with the obligations set out in this Clause 12.6 and allow for and contribute to audits, including inspections, conducted by or on behalf of the Customer..

13.7 The Customer hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this Clause 12;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the sub processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection;
- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

13.8 The Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract insofar as it relates to the obligations set out in this Clause 12, or Applicable Data Protection Laws shall be limited to the amount set out in Clause 15.6.

13.9 To the extent that the Supplier cannot comply with a change to the Customer's instructions when processing Customer 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 Request (as set out in Clause 16)

14. Intellectual property rights

14.1 Subject to Clause 13.2 below, on creation by the Supplier and upon the Supplier receiving payment in full of the applicable Fee, all Intellectual Property Rights in bespoke materials or code created under the Services ("Bespoke IPR") for the Customer shall vest automatically in the Customer. The 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 an 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.

14.2 Notwithstanding Clause 13.1 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.

14.3 The Customer may not, at any time including after termination of this Agreement, share any Supplier Intellectual Property with any third party without the Supplier's prior written consent. The Supplier may treat the Customer's breach of this Clause 13.2 as a breach of the Agreement.

14.4 The Customer acknowledges and agrees that a breach of this Clause 13 may cause irreparable injury to the Supplier for which there may be no adequate remedy at law, and the Supplier shall be entitled to seek interim or other equitable relief necessary, including an injunction and specific performance, in the event of any breach or threatened breach or intended breach of this Clause 13 by the Customer.

14.5 The Customer shall pay and indemnify the 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 Rights 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.

14.6 The Supplier shall pay and indemnify the Customer, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the Customer, arising by reason of claims that (1) the 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 Rights 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.

14.7 If either Party ("Indemnifying Party") is required to indemnify the other Party ("Indemnified Party") under this Clause 13, 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 13.5 or Clause 13.6 (as applicable);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR 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 IPR 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 IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

13.8 If an IPR Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought, the 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.

13.9 Except to the extent that the Supplier should reasonably have known or advised the Customer the foregoing provisions of Clause 13.8, 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.

15. Third party services

15.1 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 relevant Quote. 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 the Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in 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”).

15.2 It is a condition of this Agreement that the Customer shall enter into such direct Licence Agreements issued by the Third Party Supplier where the Customer must directly contract with that Third Party Supplier as so prescribed by the relevant software owners of each Third Party Services identified within this Agreement and/or in the applicable Quote. 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 Supplier), the Supplier reserves the right to suspend the provision of the Services until such time as the Customer enters into such Licence Agreement.

15.3 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 breach of such Licence Agreements.

15.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties, and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services (as applicable) in any form or media or by any means; or
- (b) attempt to adapt, make error corrections, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
- (c) access all or any part of the Services in order to build a product or service which competes with all or any part of the Services during the term of this Agreement and for a period of six (6) years thereafter; or
- (d) use the Services to provide services to third parties; or
- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or

(f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 14.4.

15.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.

15.6 The rights provided under this Clause 14 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer unless otherwise agreed in a Quote.

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

15.8 The Customer's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of the Agreement. Unless otherwise specified in the applicable Quote, the Customer shall remain liable for any and all payments due in respect of the licences until the end of the respective subscription period.

15.9 Termination of the licences will not affect any other Services provided under this Agreement.

15.10 The Supplier shall not be liable whatsoever to the Customer following any termination or suspension of the Subscription Services for legal, regulatory or any other reason reasons by any Third Party Supplier.

16. Exclusions, limitations of liability, warranties and indemnities

16.1 The Customer accepts that even where the Services include protection against Cyber-Attack (including reviews of the Customer's cyber security resilience or readiness) or protection of data, there are circumstances where such Services will fail and that this cannot be predicted by the Supplier or prevented through delivery of the Services. For the avoidance of doubt, subject to Clause 15.4, the Supplier shall not be liable for any losses incurred as a result of a security or data loss incident.

16.2 The Customer acknowledges and agrees that, except as expressly provided in this Agreement or unless it is a Service under a relevant Quote, 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.

16.3 This Clause 15 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.

16.4 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) any other liability which cannot lawfully be excluded or limited.

16.5 Subject to Clause 15.4 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.

16.6 Any breach of the Party's responsibilities under Clause 12 shall be limited to five hundred thousand pounds (£500,000) in the aggregate, which shall count towards the cap set out in Clause 15.7.

16.7 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:

- (a) the Goods, shall be limited to the replacement value of the Goods; and
- (b) 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.

16.8 Except as expressly and specifically provided in this Agreement 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:

- (a) special damage even if the other Party was aware of the circumstances in which such special damage could arise;
- (b) loss of profits;
- (c) loss of anticipated savings;
- (d) loss of business opportunity;
- (e) loss of goodwill and reputation;
- (f) loss or corruption of data.

15.9 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.

16.10 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.

16.11 The Supplier shall maintain in force the following minimum insurance policies:

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

16.12 The Customer shall indemnify the Supplier against all losses, claims, demands, costs and expenses incurred or suffered by the Supplier arising out of or in connection with the Customer's breach of the terms of the Acceptable Use Policy.

17. Change requests

17.1 Either Party may request changes to any Services (in each case, a “Change Request”). Any Change Request 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.

17.2 Where the Parties propose a Change Request 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 Request within five (5) Business Days of its receipt of the written estimate.

17.3 Until such time as a Change Request has been agreed to by the Parties, the Parties shall continue to perform their respective obligations under the relevant Quote without taking into account the Change Request. Once duly agreed by both Parties, the Change Request shall be deemed incorporated into Agreement and relevant Quote and the Supplier shall commence performance of the Change Request accordingly.

17.4 Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.

17.5 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 Request requested by the Customer.

18. Confidentiality

18.1 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 Quote.

18.2 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 17.1.

18.3 The obligations of confidentiality set out in this Clause 17 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.

19. Term and termination

19.1 This Agreement shall commence on the Commencement Date and each Quote shall commence on the Services Commencement Date and shall remain in full force for the Initial Term unless otherwise agreed by the Parties in writing or earlier terminated in accordance with the term of this Agreement. Thereafter, this Agreement and each Quote 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 Initial Term or the relevant Subsequent Term, to terminate this Agreement.

19.2 Additional termination provisions relating to a Service may be set out in the applicable Quote and shall apply to that Service only.

19.3 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 6.7 and 6.8;
- (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 12, Clause 17 or Clause 22; 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.

19.4 The Supplier may terminate the Subscription Services immediately on giving written notice to the Customer if the Customer repeatedly or obviously reports (or instructs the Supplier to report) incorrect use of the Subscription Services to the Supplier.

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

19.6 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 (as applicable); (2) any Licence Fees as set out under Clause 14.1; and (3) any termination fees that the Supplier incurs from any of its Third Party Suppliers 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 Supplier 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) all licences granted under the Agreement will terminate immediately except for fully-paid, perpetual licences;
- (d) for metered Products billed periodically based on usage, the Customer must immediately pay for unpaid usage as of the termination date; and
- (e) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.

19.7 Save as provided in Clause 18 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 Quote. Termination of a Quote shall not by default, terminate other Quotes nor this Agreement.

19.8 Termination of any Quote shall be without prejudice to any other rights which any party may have under any other Quote.

19.9 If for any reason a contract between a Third Party Supplier and the Supplier relating to the Supplier's right to use, install or support Third Party Services which is the subject of the Agreement is terminated, then the Agreement or applicable Quote (as the case may be) shall automatically terminate, save that where the Agreement or applicable Quote relates to other Services other than that Third Party Service, termination of the Agreement or applicable Quote shall operate only in so far as it relates to such Third Party Services.

19.10 Upon termination of this Agreement or a specific Quote 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.

19.11 Upon termination of the Agreement or a specific Quote (as applicable), the Supplier shall only retain the Customer Data for a maximum period of three (3) months from the date of termination and may delete all such copies of its Customer Data after the three (3) months period has ended.

19.12 The provisions of Clauses 8, 10, 12, 13, 14, 15, 17, 18, 19, 20 and 22 shall survive termination of any Quote or this Agreement.

20. Staff transfer and non-solicitation

20.1 It is the intention of the Parties (although neither gives any warranty to this effect) that no 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 pursuant to TUPE.

20.2 In the event that that TUPE does apply on the commencement or termination of the provision of all or part of the Services, the provisions of Schedule 2 will apply.

20.3 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 nine (9) months thereafter. For the purposes of this Clause 'solicit' means the soliciting of such person with a view to engaging or employing such person as an employee, worker, director, partner, shareholder, agent sub contractor, independent contractor or similar.

20.4 In the event that either Party is in breach of Clause 19.3 above then the Party in breach shall pay to the other by way of liquidated damages an amount equal to fifty percent (50%) per cent of the gross annual salary or fees (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.

20.5 The Parties hereby acknowledge and agree that the formula specified in Clause 19.4 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

21. Relief events

21.1 Subject to Clause 15.4, 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.

22. Force majeure

22.1 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.

23. Anti-bribery

23.1 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.

23.2 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 22 (“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.

23.3 For the purpose of this Clause 22, 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 22 a person associated with the Supplier includes any subcontractor of the Supplier.

24. Waiver

24.1 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.

25. Severance

25.1 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.

25.2 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.

26. Entire agreement and amendment

26.1 This Agreement and its references to further documentation, the Licence Agreements, the relevant Quotes 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.

26.2 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.

26.3 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.

26.4 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.

27. Assignment

27.1 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.

28. No partnership or agency

28.1 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.

29. Third-party rights

29.1 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 Customer Agreement) and is not intended to benefit or be enforceable by anyone else.

30. Notices

30.1 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.

30.2 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.

30.3 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.

31. Dispute resolution

31.1 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”).

31.2 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 (5) 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.

31.3 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.

31.4 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.

32. Marketing

32.1 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.

33. Governing law and jurisdiction

33.1 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 and Wales.

33.2 The Parties irrevocably agree that the courts of England and Wales 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).

34. Schedule 1

Data protection schedule

Data subjects:	<p>Customer personnel</p> <p>Customer clients</p> <p>Customer third parties</p> <p>Business contacts in general</p>
Types of personal data:	<p>Name</p> <p>Job title</p> <p>Email address</p> <p>Phone number</p> <p>Business/home address</p> <p>Date of birth</p> <p>Place of birth</p> <p>Any other personal data provided by the Customer to the Supplier</p>
Special categories of personal data:	<p>Health data</p>
Purpose of processing:	<p>In the case of data subjects other than staff: for the purpose of providing IT services and support to Customer's business.</p> <p>In the case of staff: for the purpose of providing IT services and support for Customer's employment and HR matters.</p>
Nature of processing:	<p>As set out in the body of the Agreement.</p>
Approved Sub-Processors:	
Approved international transfers:	
Additional instructions:	

35. Schedule 2

TUPE

1. Interpretation

The following definitions in this paragraph apply in this Schedule 2 (in addition to the definitions in the main body of the Agreement):

Employee(s): the employee(s) specified in writing to the Supplier prior to the Transfer Date wholly assigned to all or part of the Existing Services immediately prior to the Transfer Date

Employee Liability Information: in respect of each of the Employees:

- a) their ages, dates of commencement of employment or engagement and gender;
- b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- c) the identity of their employer or relevant contracting party;
- d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
- e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and car schemes applicable to them;
- g) information about any court or tribunal case, claim or action either brought by the Employee against the Customer or an Existing Service Supplier within the previous three years or where the Customer or Existing Service Supplier has reasonable grounds to believe that such action may be brought against the Supplier arising out of the Employee's employment with the Customer or an Existing Service Supplier;
- h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
- i) details of any such individuals subject to performance improvement plans, capability procedures, extended probationary periods or similar;
- j) information about any disciplinary action taken against the Employee(s) and any grievances raised by the Employees where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the

resolution of disputes or any other applicable code or statutory procedure applied, within the previous two years;

- k) information about any collective agreement which will have effect after the Transfer Date in relation to the Employee(s) pursuant to regulation 5(a) of TUPE;
- l) the employee liability information set out in regulation 11 of TUPE, not otherwise separately referred to in this definition;
- m) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment or engagement (together with any updating letters or documents) and the applicable handbook, codes, policies and procedures; and
- n) any other information reasonably required by the Supplier.

Existing Services: any services the same or similar to the Services provided by the Customer or any Existing Service Supplier for the Customer prior to the Transfer Date.

Existing Service Supplier: any current supplier of Existing Services to the Customer prior to the Transfer Date.

Replacement Supplier: any person or entity that provides all or part of the Services or services similar or equivalent to all or part of the Services in substitution for the Supplier or any subcontractor of the Supplier.

Service Transfer Date: the date on which the Services (or any part of the Services) provided under the applicable Quote, for whatever reason, transfer from the Supplier to a Replacement Supplier or the Customer.

Transfer Date: the date the provision of the Services by the Supplier commences under the applicable Quote.

Transferring Employees: the Employee(s) wholly or mainly assigned on the Service Transfer Date to the provision of the Services or any part of the Services under the applicable Quote.

2. Transfer of Employees to the Supplier at the Transfer Date

2.1 The Customer and the Supplier agree that the provision of the Services constitute a relevant transfer under TUPE and therefore believe that, pursuant to TUPE, at the Transfer Date, the Employees' contracts of employment will transfer to the Supplier from the Customer or an Existing Service Supplier and the Supplier will become the employer of the Employees.

2.2 The Customer shall or shall procure that the Existing Service Supplier:

- a) provides to the Supplier the Employee Liability Information no less than 8 weeks prior to the Transfer Date; and

b) promptly updates the information supplied in 2.2 a) following any changes after the information has been provided to the Supplier.

2.3 The Customer agrees to and shall procure that the Existing Service Supplier shall agree to cooperate with any pre-transfer consultation by the Supplier in accordance with Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 if required.

2.4 The Customer represents, warrants and undertakes to the Supplier that, as at the Transfer Date:

a) no persons are employed or engaged in the provision of the Services other than the Employees;

b) none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this Agreement;

c) all salaries, emoluments and outgoings relating to the Employees (including, without limitation, all wages, commission, bonuses, PAYE, National Insurance contributions, holiday pay, pension contributions and otherwise) have been paid and met up to and including the Transfer Date;

d) full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable) are set out as part of the Employee Liability Information;

e) the Employee Liability Information provided is full, true and accurate in all material respects and up to date (as at the date provided);

f) no Employees are entitled to an enhanced redundancy payment or enhanced redundancy terms (whether or not contractual);

g) there is not in existence any contract of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Services which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal); and

h) all obligations imposed on it or the Existing Service Supplier, whether statutory, contractual or otherwise, in respect of the employment of the Employees have been complied with.

2.5 The Customer shall indemnify the Supplier on demand in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Supplier including without limitation all reasonable legal expenses, other professional fees, and internal costs and expenses [whether time costs or otherwise] incurred by the Supplier in respect of any of the Supplier's personnel (together with any VAT thereon) in relation to:

- a) any breach of paragraph 2.4 or failure to provide full and accurate Employee Liability Information in relation to the Employees;
- b) the employment of the Employees on or before the Transfer Date;
- c) any act or omission by the Customer or an Existing Service Supplier on or before the Transfer Date;
- d) all and any claims in respect of all emoluments and outgoings in relation to the Employee(s) (including, without limitation, all wages, commission, bonuses, PAYE, National Insurance contributions, pension contributions, holiday pay and otherwise) payable in respect of any period on or before the Transfer Date;
- e) any claim arising out of the provision of, or proposal by the Customer (or an Existing Service Supplier) to offer any change to any benefit, term or condition or working condition of the Employee(s) arising on or before the Transfer Date;
- f) any claim made by or in respect of any person employed or formerly employed by the Customer (or an Existing Service Supplier), other than the Employee(s), for which it is alleged the Supplier may be liable by virtue of this Agreement, including associated Quotes and/or TUPE;
- g) any act or omission of the Customer (or an Existing Service Supplier) in relation to its obligations under TUPE, including but not limited to regulations 11 and 13 of TUPE, or in respect of an award of compensation under regulation 12 of TUPE;
- h) the termination by the Customer or an Existing Service Supplier of the employment of the Employee(s) arising out of the transfer of the Services up to and including the Transfer Date;
- i) anything done or omitted to be done in respect of the Employee(s) which is deemed to have been done by the Supplier by virtue of TUPE; and
- j) any claim made at any time by any other person(s) other than the Employee(s) who claim(s) to have become an employee of or have rights against the Supplier by virtue of TUPE.

2.6 The Supplier shall indemnify the Customer on demand and in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer, including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- a) Any failure by the Supplier to comply with its obligations pursuant to TUPE and the Agreement where the obligation relates to the Employees after the Transfer Date and up to and including the Service Transfer Date; and
- b) anything done or omitted to be done by the Supplier in respect of the Employees on or after the Transfer Date up to and including the Service Transfer Date.

2.7 The Customer shall provide or procure that the Existing Service Supplier provides reasonable assistance to the Supplier as required promptly without charge (including but not

limited to the provision of information and access to relevant personnel of the Customer or the Existing Service Supplier) in relation to any claims or actions brought against the Supplier arising out of actions or omissions or similar set out in paragraph 2.5.

3. Employment Exit Provisions

3.1 After the Transfer Date, the provision of services to the Customer, the same as or similar to the Services (or any part of the Services) may continue, but the identity of the provider changes, resulting in a transfer of the Services in whole or part. If this change is a relevant transfer for the purposes of TUPE then in accordance with TUPE the contracts of employment of those employees wholly or mainly assigned to the provision of the Services or any part of the Services would transfer to the Customer or the Replacement Supplier on the Service Transfer Date together with the liabilities in respect of the Transferring Employees and the provisions in this paragraph 3 of Schedule 2 would apply.

3.2 The Supplier agrees that, subject to compliance with Applicable Data Protection Laws, in connection with a relevant transfer to which TUPE applies, the Supplier shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account from the Transfer Date up to and including the Service Transfer Date including its obligations pursuant to TUPE.

3.3 The parties acknowledge and agree that on the termination of the Services (whether in whole or in part), this paragraph 3 is subject always to the Supplier's first option to retain the Transferring Employees and to continue to employ them (in conjunction with the Transferring Employees wishing to remain with the Supplier and not to transfer to the Customer or a Replacement Supplier). Therefore, prior to any TUPE transfer and the associated anticipated transfer of the employment and contracts of employment of the Transferring Employees to the Customer or a Replacement Supplier, it is agreed that the Supplier may retain employees that would otherwise be transferring as Transferring Employees and reassign such Transferring Employees or offer alternative roles which do not involve continued assignment to the Services (or services the same as or similar to the Services) following the termination of the Services. The Customer agrees that such arrangements and actions taken by the Supplier shall not give rise to a breach of this agreement by the Supplier or to any claim by the Customer or any Replacement Supplier under this Agreement.

3.4 The Supplier shall indemnify the Customer on demand and any Replacement Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer or any Replacement Supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- a) any act or omission by the Supplier after the Transfer Date but on or before the Service Transfer Date in respect of the Transferring Employees;
- b) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation, all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period after the Transfer Date but on or before the Service Transfer Date);

- c) any claim arising out of the provision of, or proposal by the Supplier to offer any change to any benefit, term or condition or working condition of any Transferring Employee after the Transfer Date but arising on or before the Service Transfer Date;
- d) any claim made by or in respect of any person employed or formerly employed by the Supplier other than a Transferring Employee for which it is alleged the Customer or any Replacement Supplier may be liable by virtue of this Agreement and/or the TUPE; and
- e) any act or omission of the Supplier in relation to its obligations under regulation 11 of TUPE, or in respect of an award of compensation under regulation 12 of TUPE, except to the extent that the liability arises from the Customer or Replacement Supplier's failure to comply with regulation 11 of TUPE.

3.5 The Customer shall indemnify the Supplier against all claims arising from the Customer's or the Replacement Supplier's failure to perform and discharge any obligation and against any claims in respect of any Transferring Employees arising from or as a result of:

- a) any act or omission by the Customer or the Replacement Supplier relating to a Transferring Employee occurring on or after the Service Transfer Date; and
- b) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation, all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) accrued and payable after the Service Transfer Date.

3.6 The parties shall co-operate to ensure that any requirement to inform and consult appropriate representatives or employees in relation to any relevant transfer as a consequence of a transfer of services similar to or the same as the Services to the Customer or a Replacement Supplier will be fulfilled. The Supplier agrees that it will consent to, and co-operate with, pre-transfer consultation by any Replacement Supplier under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992.

3.7 The Customer shall assume (or shall procure that the Replacement Supplier shall assume) the outstanding obligations of the Supplier in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration before the Service Transfer Date.

3.8 The Customer will comply (or shall procure that any Existing Service Supplier or any Replacement Supplier will comply) with all relevant obligations under this Schedule 2.

4. Termination Costs

4.1 The Customer shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Supplier including without limitation all reasonable legal expenses and other professional fees (together with any VAT thereon) arising out of or connected with the transfer from the Customer or an Existing Service Supplier to the Supplier of the Employees' employment and

- a) the subsequent termination of the employment of any of the Employees on or after the Transfer Date by reason of redundancy where such terminations for the purposes of this clause 4.1a) only take place within 3 months of the Transfer Date; and/or
- b) the subsequent termination of the employment of any of the Employees on or after the Transfer Date by reason of performance or capability where such termination for the purposes of this clause 4.1b) only takes place within 6 months of the Transfer Date.

4.2 The costs referred to in paragraph 4.1 shall include (but is not limited to) any and all redundancy costs including any statutory and/or enhanced redundancy payments the Employees are entitled to or as agreed by the Customer and any associated sums or payments including salary and benefit costs whilst employed by Supplier, notice pay, holiday pay, PAYE, National Insurance Contributions, pension contributions and any other benefits or otherwise.