

MSA: Terms & Conditions

1. DEFINITIONS

In this Contract the following words have the following meanings:

- 1.1 **"Affiliate"** means any direct or indirect Holding Company or Subsidiary Company of the relevant entity. A Company is a **"Subsidiary"** of another Company, if the latter company (**"Holding Company"**): (a) holds a majority of the voting rights in it; or (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it. **"Company"** includes any body corporate or any legal entity capable under law of making a contract.
- 1.2 **"Client Infrastructure"** means the Client's systems and technical infrastructure (whether owned or licensed by the Client), including those systems that directly or indirectly interface and/or are interoperable with, and/or impact on, the Services, and which are not under Supplier's management and control and explicitly identified as Supplier's responsibility under this Contract, but excluding the Connectivity Infrastructure.
- 1.3 **"Client"** means the 'Client' specified in the Order.
- 1.4 **"Confidential Information"** all confidential information (however recorded or preserved) in connection with this Contract, including but not limited to: (a) the terms of this Contract and the pricing; (b) any information that would be regarded as confidential by a reasonable business person (excluding Cleansed Data) relating to: (i) the business, assets, affairs, customers, clients, suppliers, of the disclosing party or its Affiliates; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party or its Affiliates;
- 1.5 **"Connectivity Infrastructure"** means the internet, telecommunications links, broadband and/or third party software and systems which are neither owned or

supplied by the Supplier or the Client and which connect the Services and/or the Supplier Software to wide area networks.

- 1.6 **"Contract"** means these MSA Terms & Conditions, the Order, and the Schedules.
- 1.7 **"Costs"** means costs, liabilities, penalties, and charges.
- 1.8 **"Deliverables"** means the output/deliverables in respect of any Services.
- 1.9 **"Effective Date"** means the contract date specified in the Order.
- 1.10 **"Event of Force Majeure"** any circumstances beyond a party's reasonable control, including, without limitation: (a) act of God, explosion, flood, tempest, fire or accident; (b) unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites; (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or Order regulations or embargoes; (e) any change in any Law(s) that has an impact on the parties' rights and/or responsibilities under this Contract; (f) any breach by a third party of the Computer Misuse Act 1990 or the Communications Act 2003 that has the object or effect of directly or indirectly interfering with or damaging the Client Infrastructure, and/or the Supplier's hardware, software and/or network infrastructure; (g) any government guidance or instruction(s) applicable to either party or its suppliers (and any difficulties in obtaining supplies), arising as a result of any epidemic, pandemic, or outbreak of disease; (h) national or regional loss of or interrupted supply of utilities or essential supplies.
- 1.11 **"Fees"** means the fees and charges specified in the Order and the SOW(s), as varied and/or otherwise due under this Contract and/or any SOW(s).
- 1.12 **"First Payment Date"** means the date identified in the Order as the 'First Payment Date' (or otherwise, the Target Go-Live Date).

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- 1.13 **"Hosted Services"** means 'Hosted Services' as described in the Order.
- 1.14 **"Intellectual Property Rights"** means all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trade marks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature for the full duration of such rights, including any extensions or renewals.
- 1.15 **"Law"** means any applicable laws, regulations, regulatory constraints, obligations, proclamations, rules (including binding codes of practice and statement of principles incorporated and contained in such rules), or applicable judgment of a relevant court of law which is a binding precedent, in each case in force in any jurisdiction that is or may be applicable to this Contract.
- 1.16 **"Licensing Purpose"** means in the ordinary course of the Client's business and for the use(s) envisaged in the Supplier's published marketing materials for the Hosted Services.
- 1.17 **"Minimum Term"** means the period identified in the Order as the 'Minimum Term' (measured from the First Payment Date).
- 1.18 **"Order"** means the 'MSA Order' agreed between the parties.
- 1.19 **"Renewal Term"** means the shorter of: (a) the period, equal in length, to the Minimum Term; and (b) one year.
- 1.20 **"Services"** means Set-up and Implementation Services, Hosted Services and additional professional services from time to time performed pursuant to an SOW.
- 1.21 **"Set-up and Implementation Services"** means 'Set-up and Implementation Services' as described in the Order.
- 1.22 **"SLA"** means the 'Service Level Agreement' set out as a Schedule to this Contract.

- 1.23 **"Software"** means the Supplier Software, and any software supplied pursuant to this Contract, including all new releases, new versions, updates, and modifications thereto.
- 1.24 **"SOW"** means a contract for specified professional services that is made in accordance with Clause 5.2.
- 1.25 **"Supplier Software"** means the 'Supplier Software' described in the Order, including all new releases, new versions (which the parties may have mutually agreed that the Supplier will provide, at additional cost, to the Client, whether under an SOW or as a change in accordance with Clause 14), updates, and modifications thereto, and as specified in the SLA.
- 1.26 **"Supplier"** means the 'Supplier' specified in the Order.
- 1.27 **"System Access"** the local and wide area access to the Client Infrastructure as required by the Supplier in order to provide the Services pursuant to this Contract.
- 1.28 **"Target Go-Live Date"** means the target date (advised by the Supplier) on which the Client should put some or all of the Hosted Services and/or Supplier Software into live and/or operational use.
- 1.29 **"User Data"** means any information, materials, or data: (a) uploaded, stored or created in or using the Supplier Software by: (i) the Client or its users; or (ii) by the Supplier or a third party on the Client's or its users' instructions; and/or (b) provided to the Supplier by (or on behalf of) the Client or its users.

2. HOSTED SERVICES

- 2.1 From the Target Go-Live Date the Supplier shall provide Hosted Services substantially in accordance with the SLA with reasonable skill and care in accordance with good industry practice, subject to the terms of this Contract and provided that the Supplier does not warrant that the Client's use of Hosted Services will be uninterrupted or error free.

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- 2.2 The Supplier shall not be responsible for any failure to provide Hosted Services as a result of a failure by the Client to comply with its responsibilities under this Contract and: (a) errors in or corruption of the Client Infrastructure, Connectivity Infrastructure, and/or the User Data; and/or (b) the occurrence of a Suspension Event.
- 2.3 The Supplier reserves the right at its sole discretion to suspend or limit performance of the Hosted Services in the event of (each of which shall be a “**Suspension Event**”): (a) scheduled maintenance services (for which the Supplier shall give to the Client as much notice as is reasonably practicable in the circumstances); (b) a material breach by the Client of the terms of this Contract (including a failure to pay the Fees in accordance with Clause 6); (c) where ongoing use by the Client of Hosted Services, in the Supplier’s reasonable opinion, the prospect of damaging Hosted Services or degrading performance (or actually has damaged or degraded the same); (d) the occurrence of an Event of Force Majeure.
- 2.4 In the event of a failure by the Supplier to provide Hosted Services in accordance with this Contract, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such failure(s) promptly (which may include the provision of a temporary workaround) in accordance with the SLA. The Supplier’s provision of corrective services in accordance with this Clause 2.4 shall constitute the Client’s exclusive remedy for any breach of Clause 2.1. Nothing in this Clause 2.4 purports to limit the Supplier’s liability for any failure of the Supplier to comply with this Clause 2.4 (for which the provisions of Clause 12 shall apply).

3. LICENCE

- 3.1 Subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable licence for the

duration of this Contract to: (a) permit its authorised users to use the Supplier Software via the Hosted Services for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order; and (b) use the Deliverables and the documentation of the Supplier Software for the Licensing Purpose.

- 3.2 The Client shall not: (a) except as may not be excluded by Law: (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Supplier Software and/or its associated documentation in any form or media or by any means; or (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Supplier Software; or (b) access all or any part of the Hosted Services and/or Supplier Software (and/or its associated documentation) in order to build a product or service which competes with the Hosted Services.
- 3.3 The Supplier shall be entitled, from time to time, to conduct an audit of the Client’s users and use of the Hosted Services to validate that such users and/or use remain compliant in full with the terms of this Contract (“**Use Audit**”). If and to the extent the Supplier requires access to data and/or information that is not available to it (and accessible by the Client) in order to undertake such Use Audit, the Client shall promptly provide the Supplier with such data and/or information reasonably requested by the Supplier.
- 3.4 If a Use Audit reveals any unlicensed use by the Client, without prejudice to its other rights and remedies, the Supplier shall be entitled to raise an invoice for such historic unlicensed use at its prevailing list price(s) and either: (a) adjust the future Fees on the same basis on the assumption of such continued use; (b) treat such use as a material breach of this Contract and require the Client to cease such use.

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4. CLIENT'S RESPONSIBILITIES

4.1 The Client shall: (a) undertake all reasonable enquiries to satisfy itself that the Services are suitable for its needs before entering into this Contract; (b) adopt such processes and make such changes to its working practices as are necessary to make effective use of the Services; (c) have in place appropriate Client Infrastructure and Connectivity Infrastructure necessary for the provision of Services; (d) maintain, upgrade, change and/or replace the Client Infrastructure and Connectivity Infrastructure in accordance with good industry practice, the Supplier's reasonable instructions, and any minimum environment recommendations published as part of Software specifications/guidelines; (e) carry out all of its responsibilities set out in this Contract in a timely and efficient manner and, in particular, not act (or fail to act) in a manner that will delay or otherwise adversely impact on the Supplier (or its subcontractors) performance of Services; (f) provide the Supplier with all necessary information, co-operation, and assistance as may be required by the Supplier in order to provide Services; (g) comply with the Law with respect to its activities under this Contract; (h) provide the Supplier with such technical support, information, and access to systems and/or data as the Supplier reasonably requires in order to maintain System Access for the duration of this Contract; (i) reasonably determine whether it is appropriate (as a matter of good industry practice) to implement any form of additional back-up of User Data (in addition to such back-ups maintained by the Supplier as part of the Hosted Services) and if so either commission directly (or via the Supplier, if available) such additional data back-up services; (j) ensure that any data (including User Data) migrated to the Supplier as part of any data migration project is appropriately cleansed and is free from corruption or material errors; (k) not reverse engineer or decompile the Software (or attempt to

do the same), save to the extent permitted by Law.

4.2 The Client recognises that the availability of the Hosted Services is, in part, dependent on the stability of the Connectivity Infrastructure and Client Infrastructure, and that changes to the Connectivity Infrastructure and Client Infrastructure may result in the loss of availability of (or the material degradation of) the Hosted Services. The Client shall not make changes to those elements of the Connectivity Infrastructure and Client Infrastructure that are within its control, which may impact on the Hosted Services, without the authorisation of the Supplier. The parties agree that changes to Connectivity Infrastructure that are outside of both parties control (and the consequences of such changes) are not the responsibility of either party (with the exception of the Client's responsibility to pay Fees); save that both parties shall use their reasonable endeavours to mitigate the adverse impact of such changes on the Hosted Services.

4.3 The Client shall permit the Supplier, on reasonable notice, to test the Client Infrastructure. In the event that the Supplier reasonably considers that the Client Infrastructure is inadequate and/or is (or may be) responsible for performance or functionality failures or degradation, the Client shall make such changes to Client Infrastructure (whether configuration or upgrades) as the Supplier may reasonably recommend.

5. SERVICES

5.1 Services will be provided pursuant to this Contract if and to the extent that such Services are specified in the Order.

5.2 This Contract also operates as a framework under which additional Services may be provided if the parties agree any SOW(s) by completing an SOW pro forma. Any written communication is capable of constituting an SOW provided that it is clearly identified as an order for Services. An SOW is deemed completed and binding on the parties if it is signed or

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otherwise agreed by both parties. Each completed SOW is a separate contract for Services. The completed SOW incorporates all the terms of this Contract that directly or indirectly relate to the SOW.

- 5.3 The Supplier shall provide Services using reasonable care and skill and in accordance with good industry practice. Both parties shall use their reasonable endeavours to meet the timescales specified in the SOW(s). The Supplier shall not be responsible for any failure to achieve deadlines or milestones in the SOW(s) to the extent that the failure has been caused by any delay or default on the part of the Client. Time shall not be of the essence in relation to the Supplier's performance.

6. PAYMENT

- 6.1 The Client shall pay: (a) Fees as and when they fall due for payment, as specified in the Order; and (b) Fees for additional Services in respect of any SOW(s) in the manner specified in the SOW(s).
- 6.2 The Supplier shall be entitled to raise invoices in accordance with the Order and any SOWs.
- 6.3 The Client shall pay the Supplier's invoices either: (a) within thirty (30) days of the date of the invoice (or within such shorter period as specified in the Order); or (b) immediately by direct debit or standing order (if applicable; and if specified in the Order).
- 6.4 The Client may not withhold payment of any amount due to the Supplier because of any set-off, counter-claim, abatement, or other similar deduction.
- 6.5 Fees payable by the Client to the Supplier under this Contract are payable in Pounds Sterling (unless another currency is specified in the Order) and are exclusive of any tax, levy or similar governmental charges, including value added or sales tax, that may be assessed by any jurisdiction (except for income, net worth or franchise taxes on the Supplier which

shall be additionally payable by the Client).

- 6.6 If any sum payable under this Contract is not paid within ten (10) days after the due date for payment then (without prejudice to the Supplier's other rights and remedies) the Supplier reserves the right to charge interest on that sum on a daily compounded basis (before as well as after any judgment) at the annual rate of ten per cent measured from the due date to the date of payment, provided that at no time shall the Client be required to pay interest at an effective rate higher than legally permissible.
- 6.7 All Fees shall increase by: (a) five per cent (5%) per annum on either: (i) the date as notified by the Supplier; or (ii) the commencement of each Renewal Term; or if otherwise notified by the Supplier (b) by up to eight per cent (8%) per annum; each an "**Indexed Increase**". The measurement period for an Indexed Increase shall be the period between the last increase (or if there has been no increase, the First Payment Date) and the effective date of the Indexed Increase.
- 6.8 The Supplier shall be entitled to increase Fees under Clause 6.7(b) beyond the eight per cent (8%) per annum limit ("**General Increase**"), provided that if the Client objects to a General Increase it shall be entitled to terminate this Contract at any time within a six (6) month period measured from the notification date by giving to the Supplier not less than sixty (60) days' prior written notice of termination, and no General Increase shall take effect for the period from the Client's written notice until the effective date of termination of this Contract.

7. PROPERTY RIGHTS

- 7.1 Full and unencumbered title (with full title guarantee) in Deliverables shall vest in the Supplier absolutely upon creation and the Supplier and its licensors owns and shall continue to own all Intellectual Property Rights in the Supplier Software and any Deliverables. The Client undertakes at the request of the Supplier at all times

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from the date of this Contract to, and to procure that any and all of its sub-contractors and any third party involved in any SOW(s) shall, do all acts and execute all documents, papers, forms and authorisations and to dispose to or swear all declarations or oaths reasonably necessary and/or desirable to give effect to the provisions of this Clause 7.1.

8. TERM AND TERMINATION

8.1 **This Contract.** This Contract is formed (and becomes legally binding) when the parties complete and sign the Order. This Contract shall commence on the Effective Date and shall continue unless and until terminated by either party in accordance with this Clause 8.

- (i) Either party shall be entitled to terminate this Contract on expiry of the Minimum Term specified in the Order and each subsequent Renewal Term by giving to the other party not less than ninety (90) days' prior written notice.
- (ii) Either party shall be entitled to terminate this Contract immediately by giving written notice to the other party if the other party commits any material breach of this Contract and fails to remedy that breach within thirty (30) days of written notice of that breach, provided that: (a) the thirty (30) day period only applies where a breach is capable of remedy - if it is incapable of remedy, the Contract may be terminated by written notice immediately; and (b) the parties agree that any failure to pay sums due under this Contract within the agreed payment terms shall constitute a material breach of this Contract.

8.2 **SOW(s).** The SOW(s) shall commence in accordance with Clause 4.2 and shall terminate on completion of the Services or in accordance with this Clause 8.2.

- (i) Either party shall be entitled to terminate any SOW(s) immediately by giving to the other party not less

than ninety (90) days' prior written notice, save in respect of any SOW(s) that vary the scope of the Hosted Services.

- (ii) Either party shall be entitled to terminate any SOW(s) immediately by giving written notice to the other party if the other party commits any material breach of this SOW and fails to remedy that breach within thirty (30) days of written notice of that breach, provided that: (a) the thirty (30) day period only applies where a breach is capable of remedy - if it is incapable of remedy, the SOW may be terminated by written notice immediately; and (b) the parties agree that any failure to pay sums due under any SOW within the agreed payment terms shall constitute a material breach of the SOW.

8.3 **Insolvency.** Save to the extent otherwise specified by Law, either party shall be entitled to terminate either this Contract and/or any SOW(s) immediately by giving written notice to the other party if that other party has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.

9. CONSEQUENCES OF TERMINATION

9.1 On termination of this Contract or any SOW(s) howsoever caused: (a) the rights and duties created by Clauses 6, 7, 10, 11, 12, 15, 16, and 17 shall survive; (b) the rights of either party which arose on or before termination shall be unaffected.

9.2 On termination of this Contract howsoever caused: (a) the SOW(s) shall be unaffected; (b) each party shall return, in good condition, the property of the

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other party (if any) that was made available under this Contract in accordance with that other party's reasonable instructions; (c) all licences granted shall terminate; (d) the Supplier shall make available User Data for migration to the Client; and (e) the Supplier shall be entitled to permanently erase all User Data after the period of 90 days has elapsed from the effective date of termination of this Contract.

9.3 On termination of any SOW(s) howsoever caused: (a) other SOW(s) and the Contract shall be unaffected; and (b) each party shall return, in good condition, the property of the other party (if any) that was made available under the SOW(s) in accordance with that other party's reasonable instructions. In the event that termination of the SOW(s) precedes completion of the Services: (i) the Supplier shall make such partial delivery to the Client of the Deliverables as is reasonably practicable (subject to full receipt of payment under the SOW), such Deliverables to be provided on an "AS IS" basis; and (ii) if the parties had agreed to a fixed price under the SOW(s), the Supplier may (at its sole discretion) reduce the fixed price by an amount that reasonably reflects both the value of the Services that have been provided under the SOW(s) and the cost to the Supplier of providing such Services.

10. CONFIDENTIALITY

10.1 Each party that receives ("Receiving Party") Confidential Information from the other (or the other's Affiliate(s)) ("Disclosing Party"), whether before or after the Effective Date shall: (a) keep the Confidential Information confidential; (b) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 10.2, or 10.3; and (c) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Contract ("Permitted Purpose").

10.2 The Receiving Party may disclose Confidential Information to its own, or any of its Affiliates, officers, directors, employees agents and advisers who reasonably need to know for the Permitted Purpose (each a "Permitted Third Party"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 10 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 10. The Supplier may disclose Confidential Information to any Affiliate, provided that such Affiliate shall only use such information either for the Permitted Purpose or in order to offer the Client its, or any of its Affiliate's, products and/or services that it reasonably considers may be of interest to the Client.

10.3 If required by Law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.

11. DATA

11.1 The Supplier shall not own (or claim ownership rights in respect of) User Data.

11.2 The Client is responsible for the accuracy, reliability, lawfulness, and integrity of all User Data. The Client warrants that User Data shall not be defamatory or offensive and that it, and its users, have all consents, licenses and permissions (including the consent of any Data Subjects) in respect of User Data as are required for Client (and its users) to lawfully upload, store, distribute, publish, share and/or Process the User Data (as applicable): (a) in/through the Supplier

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Software; and/or (b) to/with other Client users or any third parties who are authorised by the Client or by Law to view/access the User Data. The Client shall indemnify and hold harmless the Supplier for Costs arising from a breach of this Clause 11.2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this Clause 11.2.

11.3 The Client acknowledges that the provision of high-quality services requires the Supplier to analyse data to identify trends, optimise services, and provide clients with the opportunity to use such information to enhance their own services. The Client therefore grants to the Supplier a non-exclusive, perpetual, irrevocable, royalty free, worldwide licence to use, modify, adapt, and create derivative works of User Data for any purposes, and commercially exploit and/or sublicense any or all of such rights on any terms, provided always that such User Data must at all times be cleansed such that individuals, the Client, and/or any legal entities cannot be identified in any circumstances (“**Cleansed Data**”).

11.4 The parties shall comply with the data processing provisions, set out as a Schedule to this Contract.

12. LIABILITY

12.1 Neither party shall exclude or limit its liability for: (a) death or personal injury caused by its negligence; and/or (b) fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); (d) breach of section 2 of the Consumer Protection Act 1987; and/or (e) any liability that cannot be excluded or limited by Law.

12.2 Subject to Clause 12.1, the Supplier shall not be liable for any direct or indirect loss of profit, loss of revenue, loss of anticipated savings, re-procurement costs, and/or loss of goodwill.

12.3 The Client agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into this Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).

12.4 The Supplier’s Contractual Liability to the Client shall not exceed one hundred and fifty per cent (150%) of the Fees paid (plus any unpaid Fees that are payable) under the Contract (but not any SOW) in the 12 month period prior to the date in which the claim (or series of connected claims) arose. “**Contractual Liability**” means liability howsoever arising under or in relation to the subject matter of this Contract that is not: (a) unlimited by virtue of Clause 12.1; or (b) excluded pursuant to Clauses 12.2 and 12.3.

12.5 The Supplier’s SOW Liability to the Client shall not exceed the Fees paid (plus any unpaid Fees that are payable) under the SOW under which the claim (or series of connected claims) arose. “**SOW Liability**” means liability howsoever arising under or in relation to the subject matter of the SOW under which the claim (or series of connected claims) arose that is not: (a) unlimited by virtue of Clause 12.1; (b) excluded pursuant to Clauses 12.2, 12.3, and 12.4.

12.6 Except as expressly provided in this Contract, the Supplier hereby excludes any implied condition or warranty concerning the quality or fitness for purpose of its services, whether such condition or warranty is implied by statute or common law.

12.7 Neither party shall be liable for any delay or failure in performing its duties under this Contract caused by an Event of Force Majeure. If an Event of Force Majeure causes the Supplier a delay in or failure to perform duties under this Contract for a continuous period of fourteen (14) days (“**Force Majeure Period**”), the Client shall be entitled to terminate this Contract by giving to the Supplier not less than thirty (30) days’ prior written notice, such notice

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to be given within fourteen (14) days of expiry of the Force Majeure Period.

13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 Neither party shall assign or otherwise transfer this Contract or any of its rights and duties under this Contract without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that the Supplier shall be entitled (and the Client hereby irrevocably consents) to assign in whole or in part, or novate the entirety of this Contract, to any Affiliate as part of a bona fide corporate restructuring by providing not less than seven (7) days' prior written notice to the Client.
- 13.2 The Supplier may sub-contract the performance of any of its duties. The Supplier shall be entitled, at its sole discretion, to replace such service providers from time to time without notice to the Client.
- 13.3 The rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

14. CHANGES

- 14.1 Subject to Clause 14.4, no changes to this Contract or the SOW(s) shall be valid unless made in writing and signed by the authorised representatives of both parties.
- 14.2 Either party shall be entitled from time to time to request a change to the scope of the Services ("Change"). Neither party shall be entitled to charge for considering and/or negotiating a Change unless such consideration requires the Supplier to undertake detailed scoping in which case the Supplier shall be entitled to charge pursuant to an SOW.
- 14.3 A Change will be effective when it is documented in writing in a standard Supplier change control form.
- 14.4 The Supplier reserves the right to make changes to Hosted Services from time to

time provided that the Supplier has given the Client not less than sixty (60) days' prior written notice of such change (a "Change Notice") and provided further that in the event that such a change removes material Hosted Services functionality to the material detriment of the Client's use of Hosted Services the Client shall be entitled by giving the Supplier not less than thirty (30) days' prior written notice prior to the Change Notice taking effect to terminate this Contract. In the event of termination by the Client in accordance with this Clause 14.4, the Supplier shall refund to the Client any prepaid Fees covering any unused period, pro rated on a daily basis.

- 14.5 Neither party shall unreasonably withhold its consent to the other's request to re-schedule the date or time of performance of Services. However, given that it will not be practical for the Supplier to re-schedule resources on short notice, the parties agree that: (a) if the Client gives to the Supplier less than two (2) clear days' notice of such a request then the Client must pay to the Supplier the full value of such booked Services; (b) if the Client gives to the Supplier between two (2) and seven (7) clear days' notice of such a request then the Client must pay to the Supplier fifty per cent (50%) of the full value of such booked Services. For the purpose of this Clause 14.5, a "day" excludes Saturday, Sunday, and public holidays.

15. NON-SOLICITATION

- 15.1 For the duration of this Contract and a period of twelve (12) months thereafter, each party shall not, and shall ensure that any of its Affiliates shall not, without the prior written consent of the other, solicit, entice away, and/or actively initiate recruitment (whether directly or indirectly) of any employee of the other who performed (or is performing) a material function for the other party (excluding administrative, secretarial, or other back-office functions).

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15.2 If a party breaches Clause 15.1, it shall pay the other party an amount equal to the last twelve (12) months' salary of the applicable individual in recognition of the value of the individual to the other party and cost of recruiting and training a replacement. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by the other party in these circumstances and not a penalty.

16. DISPUTES

16.1 The parties shall attempt to resolve any dispute arising out of or relating to this Contract (including any dispute relating to any non-contractual obligations arising out of or in connection with it) (the "Dispute") through discussions between senior representatives.

16.2 Where the Dispute is not resolved within forty (40) days of the start of discussions in accordance with Clause 16.1 above, the parties shall attempt to resolve the Dispute in good faith through an Alternative Dispute Resolution ("ADR") procedure as recommended by the Centre for Effective Dispute Resolution.

16.3 If the Dispute has not been resolved by an ADR procedure within forty (40) days of the initiation of that procedure, or if either of the Supplier or the Client will not participate in an ADR procedure, either of the parties shall be entitled to refer the Dispute to the High Court of England and Wales and the parties submit to its exclusive jurisdiction for that purpose.

16.4 Clauses 16.1 to 16.3 above shall not restrict either party's ability to commence court proceedings in respect of any: (a) matter relating to its Confidential Information or Intellectual Property Rights; and/or (b) unpaid invoice.

17. GENERAL PROVISIONS

17.1 **Publicity.** The Client hereby irrevocably consents to the Supplier referring to the Client as a client of the Supplier in its sales and marketing literature (including its web site).

17.2 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Contract.

17.3 **Relationship.** Nothing in this Contract shall render the Client a partner or an agent of the Supplier and the Client shall not purport to undertake any obligation on the Supplier's behalf nor expose the Supplier to any liability nor pledge or purport to pledge the Supplier's credit.

17.4 **Entire Agreement.** This Contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.

17.5 **Severance.** If any part of this Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Contract shall remain in effect.

17.6 **No Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.

17.7 **No Bribery.** Each party warrants to the other that it: (a) has not and will not commit an offence under the Bribery Act 2010 in relation to this Contract or any other contract between the parties; and (b) has adequate procedures (as defined in section 7(2) of that Act) in place to prevent its associated persons from committing an offence under that Act.

17.8 **Anti-Slavery.** In performing its obligations under this Contract, the Supplier shall: (a) comply with all applicable anti-slavery and human trafficking Laws; (b) use its reasonable endeavours to include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 17.8; (c) maintain a complete set of records to trace the supply chain of all goods and services provided to the Client in connection with this Contract; and provide to the Client, on not less than 30 days' prior written notice,

MSA: Terms & Conditions

records to evidence the Supplier's compliance with its obligations under this Clause 17.8. The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

17.9 **Counterparts.** This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

17.10 **Injunctive Relief.** Nothing in this Contract shall prevent or preclude either party from seeking injunctive relief.

17.11 **Notices.** All notices (which include invoices and correspondence) under this Contract shall be in writing and shall be sent to the address of the recipient set out in this Contract or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally, by a reputable courier service, by first-class post, or by email and shall be deemed to have been served if by hand when delivered, if by courier service or first class post 48 hours after delivery to the courier or posting (as the case may be), or if by email immediately.

17.12 **Interpretation.** In this Contract: (a) any reference to a Clause means a reference to a Clause of this Contract unless the context requires otherwise; (b) unless the context otherwise requires, the words “including” and “include” and words of similar effect shall not be deemed to limit the general effect of the words which precede them; (c) the headings are for ease of reference only and shall not affect the construction or interpretation of the Contract; and (d) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or

re-enacted by any subsequent enactment, order, regulation or instrument.

17.13 **Hierarchy.** To the extent there is any inconsistency between the provisions of these terms and conditions, the Order, the Schedules, the SOW(s), any documents incorporated into this Contract, and any documents incorporated into the SOW(s) the following order of precedence shall apply: (a) first these terms and conditions; (b) second the Schedules; (c) third the Order; (d) fourth the SOW(s); (e) fifth documents incorporated into the SOW(s); and (f) sixth documents incorporated into this Contract.

17.14 **Law.** This Contract is governed by the laws of England.

MSA: Schedule 1 – SLA

AVAILABILITY

1.1 The Supplier shall use its reasonable endeavours to make the Hosted Services available on a 99.5% basis, measured each calendar month. The target uptime set out in this paragraph shall be met if there are no Priority 0 or 1 incidents outstanding. The target uptime excludes downtime during maintenance (as set out in paragraphs 1.2 – 1.3 below), or any agreed installation period for New Products.

MAINTENANCE

1.2 The Supplier shall from time to time provide and install: (a) minor improvements, updates, enhancements, error corrections, upgrade scripts, and changes to the Supplier Software (each containing updates to the help files and documentation) ("**Maintenance Releases**"); and (b) new releases, new versions, updates, and modifications to the Supplier Software that do not constitute New Products (as generally available in accordance with the Supplier's timetable for releasing new versions as amended from time to time and available on request including updates to the help files and documentation) ("**New Version**").

1.3 Nothing in this Contract shall entitle the Client to any new version of the Products which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product ("**New Product**").

SUPPORT

1.4 In response to errors in the Hosted Services and/or the Supplier Software reported to the Supplier's helpdesk in accordance with paragraphs 1.9 - 1.10 (below), the Supplier will provide the service levels specified at paragraphs 1.12 - 1.15 (below) provided the errors reported are not Out of Scope.

1.5 "**Out of Scope**" means errors that fall outside the scope of the Supplier's responsibilities under this Contract and/or result directly or indirectly from the Client's: (a) misuse or improper use of the Hosted Services and/or the Supplier Software; and/or (b) combination, merger, or use of the Hosted Services and/or the Supplier Software with any hardware or software outside the Client Infrastructure and/or Connectivity Infrastructure.

1.6 The parties may agree that the Supplier will provide certain support and maintenance services in respect of Out of Scope errors as Services under an SOW.

ENVIRONMENT

1.7 The Client is responsible for procuring and maintaining the Client Infrastructure and Connectivity Infrastructure.

1.8 Maintenance Releases and New Versions may require enhancements to the Client Infrastructure and Connectivity Infrastructure. The Supplier will advise the Client if such enhancements are required. The Client is responsible for procuring and implementing such enhancements. The parties may agree that the Supplier will provide assistance with implementation as Services under an SOW.

CONTACTING THE COMPANY

1.9 The Supplier's support operates during the "**Support Hours**": from 09:00 – 17:30, Monday – Friday, excluding public holidays in England). Out of hours support is available on weekdays from 8am to 9am and from 5pm to 8pm. Emergency out of hours support on weekends (including public bank holidays from 9am to 8pm via a call back system exclusively.

1.10 The Client may only contact the Supplier in respect of support queries as follows: (a) email: such email address as published by the Supplier; (b) telephone: such telephone number as published by the Supplier; (c) where available (as published by the Supplier), support requests can be submitted using a custom form within the Supplier app.

1.11 References to hours in this Service Level Agreement do not include hours outside the Support Hours.

SERVICE LEVELS

1.12 The Supplier will assign a reported incident with a unique support number. If the Supplier determines that the reported incident is a fault or error with the Hosted Services and/or the Supplier Software and is within the scope of paragraph 1.4 (above) it will: (a) categorise the incident in accordance with the incident categories detailed at paragraph 1.15 (below); and (b) deliver Solutions in accordance with the response times detailed below.

1.13 "**Solutions**" are fixes or workarounds that eliminate the incident or move the incident into a lower incident category, which are provided remotely and which may (or may not) include the Supplier providing Maintenance.

1.14 If and when a Solution moves an incident into a lower incident category, the response times of that lower incident category shall apply from the moment that the incident is re-categorised.

1.15 Incident categories and responses:

Incident Category	Response
Priority 0 (Mission Critical)	
The system is <u>not operational</u> .	Reasonable efforts to start work within 1 hour and to provide a Solution within 8 hours of starting work.
Priority 1 (Business Critical)	
<u>Material functionality</u> is not available that is <u>critical</u> to the Client's business and there is <u>no</u> temporary / short term workaround.	Reasonable efforts to start work within 1½ hours and to provide a Solution within 16 hours of starting work.
Priority 2 (Serious)	
Priority 1 where there <u>is</u> a temporary / short term workaround. OR <u>Important</u> but <u>non-material</u> or <u>non-critical</u> functionality is not available and there is <u>no</u> temporary / short term workaround.	Reasonable efforts to start work within 2 hours and to provide a Solution within 40 hours of starting work.
Priority 3 (Normal)	
<u>Important</u> but <u>non-material</u> or <u>non-critical</u> functionality is not available and there <u>is</u> a temporary / short term workaround.	Reasonable efforts to start work within 4 hours and to provide a Solution within 80 hours of starting work.
Priority 4 (Minor)	
Any incident that is not Priority 0, Priority 1, Priority 2, or Priority 3.	Reasonable efforts to start work within 4 hours and to provide a Solution within 160 hours of starting work.

MSA: Schedule 2 – Data Processing

1 DEFINED TERMS

1.1 For the purposes of this Schedule:

- (i) “Data Controller”, “Data Subject”, “Personal Data”, “Data Processor”, and “Process” shall have the meaning specified in the Data Protection Legislation; and
- (ii) “Data Protection Legislation” means the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any related act or regulation in the UK, including statutory modification or re-enactment of it.

2 DATA PROCESSING TERMS

2.1 In relation to the Processing of any User Data which constitutes Personal Data, the parties agree that the Client and/or its user(s) is/are the Data Controller and the Supplier is the Data Processor.

2.2 This Schedule sets out the subject matter, duration, nature and purpose of the processing by the Supplier, as well as the types and categories of Personal Data and the obligations and rights of the Client.

2.3 The Supplier shall in respect of such Personal Data:

- (i) process that Personal Data during the term of this Contract only on the documented written instructions of the Client (which include this Contract) unless the Supplier is required by Laws to otherwise process that Personal Data. Where the Supplier is relying on Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Laws unless those Laws prohibit the Supplier from notifying the Client;
- (ii) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (iv) not transfer any Personal Data outside of the UK and/or European Economic Area unless the prior written consent of the Client has been obtained and there are appropriate safeguards in relation to the transfer;
- (v) assist the Client, at the Client’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach, notifications, impact assessments and consultations with supervisory authorities or regulators;
- (vi) notify the Client without undue delay on becoming aware of a Personal Data breach;
- (vii) ensure that provisions which are equivalent to those set out in this paragraph 2.3 are imposed upon any subprocessor engaged by the Supplier (acknowledging that the Supplier shall remain primarily liable to the Client for the subprocessor’s compliance with such provisions);
- (viii) inform the Client of any intended additions to or replacements of the Supplier’s subprocessors;
- (ix) subject to Clause 9.2(e) of the Contract, at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Laws to store the Personal Data; and

- (x) maintain complete and accurate records and information to demonstrate its compliance with this Schedule and allow for audits by the Client on reasonable notice and (but without thereby assuming the primary liability of the Client to only issue lawful instructions) immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

2.4 The Supplier shall not give access to or transfer any Personal Data to any third party without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed. The Client consents to the Supplier’s use of the subprocessors identified at www.clearcourse.co.uk/dataprocessing/subprocessors

3 DATA

3.1 Subject matter and duration of the processing of Personal Data: set out in this Schedule and is further detailed in the Supplier’s privacy policy (freely available on request).

3.2 The nature and purpose of the processing of Personal Data: such processing, in accordance with the Client’s instructions, as is necessary to provide the services pursuant to the Contract, which may include: the collection of data; recording of data; organisation of data; storage of data; alteration of data; retrieval of data; consultation with regard to data; use of data; disclosure of data to permitted third parties; combining data; and/or erasure of data.

3.3 The types of Client Personal Data to be Processed: the Client may submit Personal Data in the course of using the Services, the extent of which is determined and controlled by the Client in its sole discretion, which may include, but is not limited to Personal Data relating to the following: name; personal contact details; professional contact details; IP addresses; cookie data; login credentials; and traffic data including web logs.

3.4 The categories of Data Subject to whom the Client Personal Data relates: the Client may submit Personal Data to the Supplier, the extent of which is determined and controlled by the Client in its discretion, and which may include, but is not limited to, Personal Data relating to the following categories of data subjects: the Client’s customers, employees, business partners and suppliers.

3.5 The obligations and rights of the Client: set out in this Schedule and is further detailed in the Supplier’s privacy policy (freely available on request).

4 CLIENT RESPONSIBILITIES

4.1 The Client agrees that, in its role as Data Controller, it:

- (i) shall ensure that only lawful instructions are issued to the Supplier in respect of the Processing of the Personal Data;
- (ii) shall obtain and maintain throughout the term of the Contract all necessary permissions, consents and authorisations to enable the Supplier to process the Personal Data in accordance with the provisions of the Contract;
- (iii) has reviewed and approved the Supplier’s technical and organisational measures as being suitable for the Client’s purposes before entering into the Contract;
- (iv) has granted to the Supplier general authorisation to sub-contract its Processing of Personal Data to third parties on the terms set out in paragraph 2.3(vii);
- (v) may be considered to have no objections if it has not advised otherwise in writing within ten (10) days of notification under paragraph 2.3(viii); and
- (vi) shall promptly issue its instructions in writing to the Supplier, regarding return or deletion of the Personal Data, upon termination or expiry of the Contract (acknowledging the provisions of Clause 9.2(e) of the Contract).

MSA: Schedule 3 – Order Specific Additional Provisions

1 INTRODUCTION

1.1 The provisions of this Schedule apply to the extent identified in the Order Form/SOW (as applicable).

2 SUPPLIER DISTRIBUTED SOFTWARE AND SERVICES

2.1 In this paragraph, the following words have the following meanings: (a) “**Supplier-Distributed Service Providers**” means the third party ‘Supplier-Distributed Service Providers’ described in the Order Form; (b) “**Supplier-Distributed Service Terms**” means the additional terms applicable to the re-supply by the Supplier of services by Supplier-Distributed Service Providers as set out at paragraph 4; (c) “**Supplier-Distributed Software Vendors**” means the third party ‘Supplier-Distributed Software Vendors’ described in the Order Form; (d) “**Supplier-Distributed Vendor Licences**” means software licensing terms in respect of the re-supply by the Supplier of software supplied by Supplier-Distributed Software Vendors as set out at paragraph 3.

2.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must agree to Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms; and (b) any termination of the Supplier-Distributed Vendor Licence(s) and/or Supplier-Distributed Service Terms may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract, save that if such termination arises as a result of a breach by the Supplier of paragraph 2.4 below the Supplier shall use all reasonable endeavours to mitigate any adverse impact on the Hosted Services, failing which the Client shall be entitled to terminate this Contract and receive a refund of any prepaid fees covering any period of this Contract that has been shortened due to early termination.

2.3 The Client agrees that it will abide by the terms and conditions of Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms.

2.4 The Supplier shall ensure that the Supplier-Distributed Software Vendor and/or Supplier-Distributed Service Provider (as applicable) does not terminate the Supplier-Distributed Vendor Licence or and Supplier-Distributed Service Terms (as applicable) as a result of the Supplier’s breach of paragraph 2.5 below.

2.5 The Supplier shall make payment to Supplier-Distributed Software Vendors and Supplier-Distributed Service Providers in respect of the grant of Supplier-Distributed Vendor Licences and the provision of services under the Supplier-Distributed Service Terms, subject to the Client’s: (a) payment to the Supplier of Fees in respect of Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms; and (b) compliance, in full, with the terms and conditions of the Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms.

2.6 The Client shall indemnify and hold harmless the Supplier from all Costs arising from a breach of this paragraph 2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 2.

2.7 The parties acknowledge that the Supplier’s Fees are in part dependent on the costs imposed on it by third party technology and/or infrastructure providers which are outside of its control. As such, the Supplier shall be entitled to increase the Fees at any time by giving the Client not less than thirty (30) days’ written notice if any Supplier-Distributed Software Vendor and/or Supplier-Distributed Service Provider has increased its fees or charges in a manner that increases the costs imposed on the Supplier under this Contract, provided that such increase shall be limited to the additional cost imposed on the Supplier as may be apportioned to this Contract. Both parties will work collaboratively to mitigate the impact of any such third party costs and will endeavour to keep such increases to a minimum.

3 SUPPLIER-DISTRIBUTED VENDOR LICENCES

3.1 As set out at www.clearcourse.co.uk/thirdpartyterms

4 SUPPLIER-DISTRIBUTED SERVICE TERMS

4.1 As set out at www.clearcourse.co.uk/thirdpartyterms

5 LOCALLY INSTALLED SOFTWARE

5.1 Subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable licence for the term of this Contract to: (a) permit the authorised users to install and use any Supplier Software (that is delivered to the Client for installation on the Client Infrastructure) for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order Form; (b) use the Materials and Deliverables for the duration of the licence granted under this paragraph 5.1 and for the Licensing Purpose.

5.2 If the Order indicates that testing will be applicable to the Supplier Software, the parties shall mutually agree in writing the acceptance criteria that will be used to determine whether the Software is Accepted or Rejected (“**Acceptance Criteria**”), and in the absence of such agreement the Acceptance Criteria shall be such criteria recommended by the Supplier that demonstrate that the Software complies with its published specification(s).

5.3 If the Order indicates that testing will be applicable to the Supplier Software, the Client shall undertake and complete user acceptance testing in a test environment in accordance with good industry practice and the Supplier’s reasonable recommendations promptly (“**Tests**”).

5.4 If the Software fails the Tests: (a) the Supplier shall promptly, and in any event within fourteen (14) days, endeavour to remedy such failure (noting that the Supplier will have limited control over such Software that is supplied by third parties) and resubmit the Software for a second cycle of Tests in accordance with paragraph 5.3; or (b) the parties may agree to vary some or all of the Acceptance Criteria in relation to the Software and following which the Supplier shall promptly submit the Software for a second cycle of Tests in accordance with paragraph 5.3.

5.5 If the Software fails a second cycle of Tests, the parties agree that the cycle at paragraph 5.4 shall be repeated.

5.6 If the Software fails a third cycle of Tests, within thirty (30) days of such failure, the Client shall be entitled to Reject the Software, which: (a) in respect of Tests immediately following (or part of) the Set-Up and Implementation Services, will entitle the Client to terminate this Contract by giving to the Supplier not less than ten (10) days prior written notice, whereupon the Client shall be entitled to receive a refund of all pre-paid Fees under this Contract that relate to Software and/or Set-Up and Implementation Services; or (b) in respect of Tests immediately following (or part of) the installation/implementation of new releases and/or new versions of Software, will entitle the Client to remain on the previous release/version (as applicable).

5.7 Software shall be deemed accepted if: (a) the Client signs an acceptance certificate; (b) the Client does not exercise its rejection rights in accordance with paragraph 5.6; (c) the Client puts the Software into live or operational use.

5.8 The Client’s rights at paragraph 5.6 shall be its exclusive remedies in respect of rejection. In no circumstances shall the Client be entitled to compensation and/or damages (with the exception of the refund(s) set out at paragraph 5.6 (a)).

5.9 The Client shall install and/or implement new releases and/or new versions of Software promptly, but prior to live or operational use shall undertake the test cycle set out at paragraphs 5.2 to 5.7 above in respect of such new releases/versions.

6 OPEN SOURCE SOFTWARE

6.1 In this paragraph, the following words have the following meanings: (a) “**Open Source Licence**” means a licence in respect of the Open Source Software as described in the Order Form; (b) “**Open Source Software**” means the open source software described in the Order Form, including all new releases, new versions, updates and modifications thereto.

6.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must enter into Open Source Licences; (b) the Supplier will have no contractual obligations or responsibilities in respect of Open Source Licences and, in particular, will not be providing patches or fixes in respect of the Open Source Software; and (c) subject to paragraph 6.5, any termination of the Open Source Licences may prevent it from making substantial use of the Hosted Services, but shall not entitle it to

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- terminate this Contract and/or receive any refund under this Contract.
- 6.3 The Client agrees that it will enter into Open Source Licences and will maintain such Open Source Licences for the duration of this Contract and abide by the terms and conditions of Open Source Licences.
- 6.4 The Supplier warrants at the Effective Date that the provision of Open Source Software as part of the Hosted Services shall not infringe the terms of the Open Source Licences.
- 6.5 In the event that any Open Source Licence is terminated, or in the reasonable opinion of the Client or the Supplier, use of the Open Source Software infringes the Intellectual Property Rights of a third party, save in respect of such termination or reasonable opinion arising as a result of a breach by either party of this paragraph 6, the parties shall use all reasonable endeavours to mitigate any adverse impact to the Hosted Services (which may include the sourcing of alternative software components), provided that if notwithstanding such mitigation the adverse impact to the performance or functionality of the Hosted Services is substantial, the Client shall be entitled to terminate this Contract on thirty (30) days' prior written notice. Mitigation arising under this paragraph shall be deemed an Event of Force Majeure.
- 6.6 The Client shall indemnify and hold harmless the Supplier from all Costs arising from a breach of this paragraph 6, including all Costs associated with handling a compliant or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 6.
- 7 CLIENT-PROCURED SOFTWARE AND SERVICES**
- 7.1 In this paragraph, the following words have the following meanings: (a) "**Client-Procured Services Agreements**" means contracts entered into between Client-Procured Services Providers and the Client; (b) "**Client-Procured Services Providers**" means the third party 'Client-Procured Services Providers' described in the Order Form; (c) "**Client-Procured Software Vendors**" means the third party 'Client-Procured Software Vendors' described in the Order Form; (d) "**Client-Procured Vendor Licences**" means software licensing agreements entered into between Client-Procured Software Vendors and the Client.
- 7.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must enter into Client-Procured Vendor Licences and Client-Procured Services Agreements; and (b) the Supplier will have no contractual obligations or responsibilities in respect of Client-Procured Vendor Licences and Client-Procured Services Agreements, subject to paragraph 7.4 below; and (c) any termination of the Client-Procured Vendor Licence and/or Client-Procured Services Agreements (other than as a result of a breach by the Supplier of paragraph 7.4 below) may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract.
- 7.3 The Client agrees that it will enter into Client-Procured Vendor Licences and Client-Procured Services Agreements and will maintain such Client-Procured Vendor Licences and Client-Procured Services Agreements for the duration of this Contract and abide by the terms and conditions of Client-Procured Vendor Licences and Client-Procured Services Agreements.
- 7.4 The Supplier shall ensure that the Client-Procured Software Vendor and/or Services Provider (as applicable) does not terminate the Client-Procured Vendor Licence or and Client-Procured Services Agreements (as applicable) as a result of the Supplier's breach of paragraph 7.5 below.
- 7.5 The Supplier shall make payment to Client-Procured Software Vendors and Client-Procured Services Providers in respect of the grant of Client-Procured Vendor Licences and the provision of services under the Client-Procured Services Agreements, subject to the Client's: (a) payment to the Supplier of Fees in respect of Client-Procured Vendor Licences and Client-Procured Services Agreements; and (b) compliance, in full, with the terms and conditions of the Client-Procured Vendor Licences and Client-Procured Services Agreements.
- 7.6 The Client shall indemnify and hold harmless the Supplier from all Costs arising from a breach of this paragraph 7, including all

- Costs associated with handling a compliant or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 7.
- 7.7 The parties acknowledge that the Supplier's Fees are in part dependent on the costs imposed on it by third party technology and/or infrastructure providers which are outside of its control. As such, the Supplier shall be entitled to increase the Fees at any time by giving the Client not less than thirty (30) days' written notice if any Client-Procured Software Vendor and/or Client-Procured Service Provider, has increased its fees or charges in a manner that increases the costs imposed on or incurred by the Supplier provided that such increase shall be limited to the additional cost imposed on the Supplier as may be apportioned to this Contract. Both parties will work collaboratively to mitigate the impact of any such third party costs and will endeavour to keep such increases to a minimum.
- 8 LEASED EQUIPMENT**
- 8.1 The following definitions apply in this paragraph 8:
- (i) "**Delivery**": the transfer of physical possession of the Equipment to the Client at the Site.
 - (ii) "**Delivery Date**": the delivery date specified in the Order/SOW or otherwise agreed in writing.
 - (iii) "**Deposit**": the deposit amount set out in the Order/SOW.
 - (iv) "**Equipment**": the items of equipment set out in the Order/SOW, plus all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.
 - (v) "**Rental Payments**": the payments made by or on behalf of Client for hire of the Equipment.
 - (vi) "**Rental Period**": the period of hire as set out in this paragraph 8.
 - (vii) "**Site**": the Client's premises as set out in the Order (or otherwise specified in writing).
- 8.2 **Equipment Hire.** The Supplier shall hire the Equipment to the Client for use at the Site subject to the terms and conditions of this Contract. The Supplier shall not, other than in the exercise of its rights under this Contract or applicable law, interfere with the Client's quiet possession of the Equipment.
- 8.3 **Rental Period.** The Rental Period starts on the Delivery Date and shall continue for the duration of the Contract.
- 8.4 **Deposit.** The Deposit is a deposit against default by the Client of payment of any Rental Payments or any loss of or damage caused to the Equipment. The Client shall, on the date of this Contract, pay the deposit amount specified in the Order to the Supplier. If the Client fails to make any Rental Payments in accordance with the Order/SOW, or causes any loss or damage to the Equipment (in whole or in part), the Supplier shall be entitled to apply the Deposit against such default, loss or damage. The Client shall pay to the Supplier any sums deducted from the Deposit within ten days of a demand for the same. The Deposit (or balance of the Deposit) shall be refundable within five days of the end of the Rental Period.
- 8.5 **Delivery and Installation.** Delivery shall be made by the Supplier. The Supplier shall use all reasonable endeavours to effect Delivery by the Delivery Date. Risk shall transfer as specified in this paragraph 8. The Client shall procure that a duly authorised representative of the Client shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Client has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). If required by the Supplier, the Client's duly authorised representative shall sign a receipt confirming such acceptance. To facilitate Delivery and installation, the Client shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and installation to be carried out safely and expeditiously. If the Client fails to accept delivery of the Equipment on the Delivery Date, then, except where such failure is caused by the Supplier's failure to comply with its obligations under this Contract, the Equipment shall be deemed to have been delivered at 9.00 am on the Delivery Date and the Supplier shall store the Equipment until

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- delivery takes place, and charge the Client for all related costs and expenses (including insurance).
- 8.6 **Title and Risk.** The Equipment shall at all times remain the property of the Supplier, and the Client shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Contract). The risk of loss, theft, damage or destruction of the Equipment shall pass to the Client on Delivery. The Equipment shall remain at the sole risk of the Client during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Client (Risk Period) until such time as the Equipment is redelivered to the Supplier.
- 8.7 **Insurance.** During the Rental Period and the Risk Period, the Client shall, at its own expense, obtain and maintain the following insurances: (a) insurance of the Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing; (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and (c) insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Client in writing. The Client shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Client's possession or use of the Equipment. If the Client fails to effect or maintain any of the insurances required under this Contract, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Client. The Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.
- 8.8 **Client's Responsibilities.** The Client shall during the term of this Contract: (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions; (b) take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work; (c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Delivery Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment; (d) make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment unless the component (or components) is (or are) replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved or advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Supplier immediately on installation; (e) keep the Supplier fully informed of all material matters relating to the Equipment; (f) at all times keep the Equipment in the possession or control of the Client and keep the Supplier informed of its location; (g) permit the Supplier or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Site or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection; (h) maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require; (i) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it; (j) not without the prior written consent of the Supplier, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on such land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to such land or building and the Client shall repair and make good any damage caused by the affixation or removal of the Equipment from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal; (k) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Supplier in the Equipment and, where the Equipment has become affixed to any land or building, the Client must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Equipment both during the term of this Contract and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Equipment and a right for the Supplier to enter onto such land or building to remove the Equipment; (l) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Client shall notify the Supplier and the Client shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses reasonably incurred as a result of such confiscation; (m) not use the Equipment for any unlawful purpose; (n) ensure that at all times the Equipment remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment; (o) deliver up the Equipment at the end of the Rental Period at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and (p) not do or permit to be done anything which could invalidate the insurances referred to in this paragraph 8.
- 8.9 **Warranty.** The Supplier warrants that the Equipment shall substantially conform to its specification (as made available by the Supplier), be of satisfactory quality and fit for any purpose held out by the Supplier. The Supplier shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within six (6) months from Delivery, provided that: (a) the Client notifies the Supplier of any defect in writing within ten days of the defect occurring; (b) the Supplier is permitted to make a full examination of the alleged defect; (c) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel; (d) the defect did not arise out of any information, design or any other assistance supplied or furnished by the Client or on its behalf; and (e) the defect is directly attributable to defective material, workmanship or design.
- 8.10 **Warranty Limitations.** Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Supplier, the Client shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer. If the Supplier fails to remedy any material defect in the Equipment in accordance with this paragraph 8, the Supplier shall, at the Client's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).
- 8.11 **Client's Indemnity.** The Client shall indemnify and hold harmless the Supplier from all Costs arising from any claim or complaint made by any third party against the Supplier arising out of in connection with the Client's use of, rights in, and/or exploitation of the Equipment, save to the extent that such claim or complaint arises as a result of the Supplier's breach of this Contract.
- 8.12 **Limitation of liability.** Nothing in this Contract limits any liability which cannot legally be limited including liability for breach of the terms implied by section 7 of the Supply of Goods and Services Act or section 8 of the Supply of Goods (Implied Terms) Act 1973;

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8.13 **Consequences of Termination.** On expiry or termination of this Contract, however caused: (a) the Supplier's consent to the Client's possession of the Equipment shall terminate; (b) the Supplier may, by its authorised representatives, without notice and at the Client's expense, retake possession of the Equipment and for this purpose may enter the Site or any premises at which the Equipment is located; (c) without prejudice to any other rights or remedies of the Client, the Client shall pay to the Supplier on demand: (i) all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued; and (ii) any costs and expenses incurred by the Supplier in recovering the Equipment or in collecting any sums due under this Contract (including any storage, insurance, repair, transport, legal and remarketing costs); and (d) the Client shall pay to the Supplier on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period. Such sums may be partly or wholly recovered from any Deposit.

9 SALE OF GOODS

9.1 **Definitions.** In this paragraph 9, "**Goods**" means the Goods set out in the Order/SOW (as applicable).

9.2 **Quality and Warranty.** The Goods supplied to the Client by the Supplier under this Contract shall: (a) conform to their published specification; (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier; (c) be free from defects in design, material and workmanship and remain so for six (6) months after Delivery; and (d) comply with the Law on the date of Delivery.

9.3 **Exclusions from Warranty.** The Supplier shall not be liable for a Goods' failure to comply with the warranty set out in paragraph 9.2 in any of the following events: (a) the Client makes any further use of those Goods after giving notice in accordance with paragraph 9.7; (b) the defect arises because the Client failed to follow the Supplier's oral or written instructions for the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; (c) the Client alters or repairs those Goods without the written consent of the Supplier; (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or (e) the Goods differ from their published specification(s) as a result of changes made to ensure they comply with Law(s).

9.4 **Delivery.** The Supplier shall deliver the Goods to the Client at the delivery location ("**Delivery Location**") as specified in the Order/SOW ("**Delivery**"). Delivery is completed when the Supplier places the Goods at the Client's disposal at the Delivery Location. Delays in the delivery of Goods shall not entitle the Client to: (a) refuse to take delivery of the Goods; or (b) claim damages; or (c) terminate this Contract. The Supplier shall have no liability for any failure or delay in delivering Goods to the extent that any failure or delay is caused by the Client's failure to comply with its obligations under this Contract.

9.5 **Deemed Delivery.** If the Client fails to take delivery of Goods within three days of the Supplier notifying the Client that Goods are ready for collection, then, except where that failure or delay is caused by the Supplier's failure to comply with its obligations under this Contract or a Force Majeure Event: (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third day following the day on which the Supplier notified the Client that the Goods were ready for collection; and (b) the Supplier shall store the Goods until delivery takes place, and charge the Client for all related costs and expenses (including insurance).

9.6 **Packaging.** Packaging materials shall remain the Supplier's property and the Client shall make them available for collection at any times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

9.7 **Rejection.** The Client may reject any Goods delivered to it that do not comply with the "Quality and Warranty" provisions above, provided that: (a) notice of rejection is given to the Supplier: (i) in the case of a defect that is apparent on normal visual inspection, within five days of Delivery; (ii) in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and (b) none of the "Exclusions from Warranty" (above) apply. If

the Client fails to give notice of rejection in accordance with this paragraph, it shall be deemed to have accepted these Goods.

9.8 **Rights on Rejection.** If the Client rejects Goods in accordance with paragraph 9 then the Client shall be entitled to: (a) require the Supplier to repair or replace the rejected Goods; or (b) require the Supplier to repay the price of the rejected Goods in full. Once the Supplier has complied with the Client's request, it shall have no further liability to the Client for the rejected Goods' failure to comply with the "Quality and Warranty" provisions above.

9.9 **Replacement Goods.** The terms of this paragraph 9 shall apply to any repaired or replacement Goods supplied by the Supplier.

9.10 **Title and Risk.** Risk in Goods shall pass to the Client on Delivery. Title to Goods shall not pass to the Client until the Supplier receives payment in full for the Goods. Until title to Goods has passed to the Client, the Client shall: (a) store those Goods separately from all other goods held by the Client so that they remain readily identifiable as the Supplier's property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to those Goods; (c) maintain those Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all risks with an insurer that is reasonably acceptable to the Supplier.

9.11 **Product Recall.** If the Client is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market ("**Recall Notice**") it shall immediately notify the Supplier in writing enclosing a copy of the Recall Notice. Unless required by Law, the Client may not undertake any recall or withdrawal without the written permission of the Supplier and only then in strict compliance with the Supplier's instructions about the process of implementing the withdrawal.

9.12 **Client's Obligations.** The Client represents, warrants, and undertakes for the duration of the Contract not to use the Goods for any unlawful purpose.

9.13 **Client's Indemnity.** The Client shall indemnify and hold harmless the Supplier from all Costs arising from any claim or complaint made by any third party against the Supplier arising out of in connection with the Client's use of, rights in, and/or exploitation of the Goods, save to the extent that such claim or complaint arises as a result of the Supplier's breach of this Contract.