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Terms and Conditions 1.9.5

1. INTERPRETATION..... 3

2. APPLICATION OF CONDITIONS..... 3

3. CONTRACT FORMATION..... 3

4. SALE OF GOODS 4

5. TITLE AND RISK 5

6. EQUIPMENT RENTAL 6

7. ADDITIONAL SERVICES 7

8. CUSTOMER’S OBLIGATIONS 7

9. SUPPLIER’S OBLIGATIONS 8

10. CONTINUOUS IMPROVEMENT 8

11. SUPPLIER ASSETS 8

12. CUSTOMER ASSETS 9

13. CHARGING AND INVOICING 9

14. CHANGE MANAGEMENT PROCESS 13

15. DISPUTES 13

16. PERSONNEL 14

17. NON-SOLICITATION..... 15

18. INTELLECTUAL PROPERTY RIGHTS 15

19. LICENCES GRANTED BY THE SUPPLIER..... 17

20. LICENCES GRANTED BY THE CUSTOMER..... 17

21. CUSTOMER DATA 17

22. CONFIDENTIALITY 17

23. ANTI-BRIBERY 18

24. ANTISLAVERY AND HUMAN TRAFFICING 19

25. WARRANTIES..... 19

26. FORCE MAJEURE 20

27. LIMITATIONS ON LIABILITY 21

28. TERMINATION AND SUSPENSION..... 22

29. EXIT 24

30. ASSIGNMENT 24

31. WAIVER AND CUMULATIVE REMEDIES 24

32. RELATIONSHIP OF THE PARTIES..... 24

33. SEVERANCE 24

34. FURTHER ASSURANCES 25

35. ENTIRE AGREEMENT..... 25

36. THIRD PARTY RIGHTS..... 25

37. NOTICES 25

38. ORDER OF PRECEDENCE..... 26

39. GOVERNING LAW AND JURISDICTION..... 26

40. Schedule 1 - Definitions 27

41. Schedule 2 - Change Management Process 38

42. Schedule 3 - Professional Services 40

43. Schedule 4 - Managed Services 42

44. Schedule 5 - WAN/LAN 45

45. Schedule 6 - Public Cloud Resource Subscription Services 46

46. Schedule 7 - Software Development 47

47. Schedule 8 - Data Protection 55

1. INTERPRETATION

- 1.1 The definitions set out in Schedule 1 apply to these Conditions and the Contract.
- 1.2 Clause, Schedule 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:
 - 1.4.1 the singular includes the plural and vice versa;
 - 1.4.2 reference to a gender includes the other genders;
 - 1.4.3 a reference to writing or written includes emails;
 - 1.4.4 references to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision;
 - 1.4.5 any phrase introduced by the words including, includes, in particular, for example or similar, shall be construed as illustrative and without limitation to the generality of the related general words.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and representatives, successors or permitted assignees.
- 1.6 The Schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Any reference to these Conditions includes the Schedules.
- 1.7 Any typographical, clerical or other error or omission in, including but not limited to these Conditions, Contract and Supplier's invoices shall be subject to correction without any liability on the part of the Supplier.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:
 - 2.1.1 apply to and be incorporated into the Contract;
 - 2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to, in the Customer's purchase order, or other Customer's documentation, or implied by law, trade custom, practice or course of dealing; and
 - 2.1.3 for the avoidance of doubt the Supplier Sales and Marketing Documents are not incorporated into and do not form part of the Contract.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on either party unless in writing and signed by authorised representatives of both Parties.

3. CONTRACT FORMATION

- 3.1 On Customer's request, the Supplier shall prepare and submit a Quotation for the relevant Goods and/or Services, which shall include the proposed Charges for the Goods and/or Services. For the avoidance of doubt, all Quotations made by the Supplier shall be deemed to be made subject to these Conditions.

- 3.2 If the Customer accepts the Quotation, the Customer shall prepare a purchase order for such Goods and/or Service specified in the Quotation.
- 3.3 The Customer accepts that the Supplier's provision of a Quotation shall constitute an offer by the Supplier to contract subject to these Conditions. The Customer shall be deemed to have accepted these Conditions by the earlier of: (i) submitting a signed Quotation to the Supplier, or (ii) accepting the Goods and/or Services from the Supplier. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order or any other document shall not govern the Contract.
- 3.4 Where a Contract provides for the Supplier to provide Goods and/or Services to the Customer at more than one location, then Supplier's obligations in relation to each location shall constitute a separate contract. Failure by the Supplier to deliver the Goods and/or Services in respect of any one or more location shall not entitle the Customer to treat a whole Contract as repudiated or to cancel any other location. Additionally, each Service shall constitute a separate contract. Consequently, a failure to deliver a Service shall not entitle the Customer to treat a whole contract repudiated or to terminate another Service.
- 3.5 Without prejudice to the termination rights under these Conditions, no Contract which has been accepted by the Customer may be cancelled by the Customer for convenience.
- 3.6 The Contract shall not prevent either Party from entering into similar agreements with third parties, and the Supplier from independently developing, using, selling or licensing materials, products or services that are similar to those provided under the Contract.
- 3.7 Time shall not be of the essence of the Contract. The Supplier shall use its reasonable endeavours to meet any delivery dates for the Goods and/or Services under the Contract, but such dates are estimates only.

4. SALE OF GOODS

- 4.1 The quantity, quality and description of and any specification of the Goods shall be as set out in the Contract.
- 4.2 The Goods may be delivered to the Customer in advance of the quoted delivery date upon giving reasonable notice to the Customer. Where Goods are shipped directly by the Vendor, they may be delivered without prior notice.
- 4.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with the Contract shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 4.4 If the Customer fails to take delivery of the Goods on the agreed dates, or fails to give the Supplier adequate delivery instructions or fails to make necessary arrangements for accepting delivery at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then the Supplier may store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and other expenses incurred and time expended.

- 4.5 The Supplier reserves the right to refuse to take delivery of Goods returned by the Customer if the Customer has not first obtained a Goods return number and such number is not displayed on the packaging of the Goods returned.
- 4.6 For the avoidance of doubt, the Supplier does not manufacture any Goods and resells the Goods to the Customer only. The Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Supplier and the Supplier assigns the benefit of the same to the Customer. Where the Customer has purchased Goods only (without vendor maintenance or Managed Service) then the risk of the Goods not performing to the Customer's requirements lies with the Customer.
- 4.7 Unless the Customer has purchased the Goods with relevant vendor maintenance or Managed Service, any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the Contract shall be notified to the Supplier within 7 days, otherwise the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the Charge in accordance with the Contract.
- 4.8 The Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Supplier's approval. This may also lead to the invalidation of any Services with the Supplier.
- 4.9 The Supplier shall not be liable for any advice or recommendation given to the Customer as to the storage, application or use of the Goods which is not expressly stated within the Contract.

5. TITLE AND RISK

- 5.1 Risk of damage to or loss of the Goods shall pass to the Customer on delivery to the agreed location (whether it is Supplier's or Customer's premises or any location including a storage facility).
- 5.2 Notwithstanding delivery and the passing of risk in the Goods, the title to the Goods shall not pass to the Customer until the Supplier has received payment in cleared funds in full of the price of the Goods.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as the Supplier's property; and
 - 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 5.3.3 maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all insurable risks with a reputable insurer.
- 5.4 In the event the Customer fails to pay an invoice for the Goods by the due date for payment, the Supplier may:
- 5.4.1 require the Customer to deliver up the Goods to the Supplier and,
 - 5.4.2 if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods and in doing so the Supplier shall have

no liability to the Customer or any third party for loss of Data, software or other information belonging to the Customer or a third party stored on such Goods.

- 5.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all moneys owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable immediately.

6. EQUIPMENT RENTAL

- 6.1 Title to the Equipment shall, at all times remain with the Supplier.
- 6.2 Risk in and liability for the Equipment shall pass to the Customer on delivery of each item to the agreed location. The Customer must insure the Equipment in respect of all relevant risks from delivery.
- 6.3 The Customer must:
- 6.3.1 Not permit any other person, to sell, let, transfer, dispose of, mortgage, charge, modify, repair, service, tamper with, remove or interfere with the Equipment;
 - 6.3.2 Keep the Equipment at the agreed location and stationary at all times;
 - 6.3.3 House, keep and use any Equipment in accordance with any written instructions notified to the Customer by the Supplier from time to time or, in the absence of such instructions, to the same standard as a reasonable owner of the Equipment would if it were their property;
 - 6.3.4 In the case of an emergency, take whatever steps as are reasonably necessary to safeguard the Equipment and notify the Supplier as soon as possible of the circumstances of such emergency;
 - 6.3.5 Not remove, tamper with or obliterate any words or labels on the Equipment or any part thereof; and
 - 6.3.6 Permit the Supplier or its agent to inspect, test and maintain the Equipment at all reasonable times and on reasonable notice.
- 6.4 The Customer must immediately notify the Supplier of any loss or damage to any Equipment. Without prejudice to the Supplier's other rights and remedies, where the Customer breaches the provisions of this clause 6, the Customer indemnifies and promises to pay on demand the Supplier for the costs of repairing or replacing any Equipment damaged by the Customer's breach of this clause 6 (whether as a result of the Customer's or end users acts or omissions).
- 6.5 The Supplier does not provide any warranty in respect of any Equipment but, where possible, will provide the Customer with the benefit of any manufacturer's warranty.
- 6.6 The Supplier will be entitled, after termination (for any reason whatsoever) of the Contract by giving notice of its intention to repossess the Equipment, to:
- 6.6.1 Require the Customer (at Customer's cost and risk) to immediately return the Equipment to the Supplier; or
 - 6.6.2 Enter upon any premises with such transport as may be necessary and repossess any Equipment.
- 6.7 Following the agreed rental period, the Customer shall (at Customer's cost and risk) promptly return the Equipment to the address specified by the Supplier and in the event the Customer fails to do so,

the Supplier shall be entitled to charge the Customer, at Supplier's sole discretion, the market value of the Equipment or, additional rental fees.

7. ADDITIONAL SERVICES

- 7.1 For the avoidance of doubt, the Supplier reserves the right to charge an Additional Service Charge where (including but not limited to):
- 7.1.1 the Customer requests a Managed Service outside of Service Hours including but not limited to logging an Incident and/or requesting technical assistance (whether via telephone or email); and/or
 - 7.1.2 in the opinion of the Supplier, more than a reasonable level of Managed Service is being provided as a result of the Customers untrained personnel operating the Supported Assets; and/or
 - 7.1.3 in the opinion of the Supplier, additional time or expense is incurred as a result of a lack of instructions from the Customer, the inaccuracy of the information supplied or any other cause attributable to the Customer, including a Customer Cause; and/or
 - 7.1.4 the Supplier undertakes remedial action following a Health Check except where such service is included in the Managed Services specified in the applicable SDD;
 - 7.1.5 The Supplier undertakes a remedial action to a Service Failure which is caused by the Customer, including Customer's suppliers; and/or
 - 7.1.6 the Customer changes the location of the Supported Assets without reasonable prior notice to the Supplier.
- 7.2 The Customer accepts that the Services are subject to Exclusions identified in the Contract and in the event that the Customer requires any Goods and/or Services falling within the Exclusions, the Customer shall pay to the Supplier an Additional Service Charge.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall provide the Supplier with:
- 8.1.1 all necessary co-operation in relation to the Contract; and
 - 8.1.2 all necessary access to such information as may be reasonably required by the Supplier,
 - 8.1.3 in order for the Supplier to provide the Services; Customer Data, security access information, and (subject to providing any confidentiality undertakings reasonably required by the Customer) software interfaces to the Customer's other business applications;
 - 8.1.4 provide such personnel assistance, as may be reasonably requested by the Supplier from time to time;
 - 8.1.5 appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to the Contract.
- 8.2 The Customer shall:
- 8.2.1 comply with all applicable laws and regulations with respect to its activities under the Contract; and
 - 8.2.2 carry out all other Customer responsibilities set out in the applicable Contract or in any of the Schedules in a timely and efficient manner.

- 8.3 In the event the Supplier is delayed or prevented from performing the Services due to Customer's acts or omissions including failure or delay in performing Customer's Responsibilities identified in the Contract, the Supplier shall be entitled to charge the Customer an Additional Service Charge, adjust any previously agreed timetable and determine that such delay or failure by the Supplier to provide the Services shall not be treated as in breach of contract or applicable Service Levels.

9. SUPPLIER'S OBLIGATIONS

- 9.1 The Supplier undertakes that the Services will be performed with all reasonable skill and care and in accordance with Good Industry Practice and the provisions of these Conditions and that the Services will be provided substantially in accordance with the Contract.
- 9.2 The undertaking in Clause 9.1 shall not apply to the extent of any non-conformance that is caused by use of the Services contrary to the Supplier's instructions.
- 9.3 If the Services do not conform with the undertaking in Clause 9.1, the Supplier shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking in Clause 9.1.
- 9.4 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services shall be uninterrupted or error-free.

10. CONTINUOUS IMPROVEMENT

- 10.1 The Supplier shall use reasonable endeavours to keep the Customer informed of the emergence of new and evolving relevant technologies that could improve the Services, and those technological advances potentially available to the Supplier and the Customer that the Parties may wish to adopt. If requested by the Customer, the Supplier shall provide details to enable the Customer to evaluate properly the benefits of the new technology or process.
- 10.2 If the Customer wishes to incorporate any improvement identified by the Supplier, the Customer shall send the Supplier a Change Request and the Parties shall observe the Change Management process. The Supplier reserves the right to revise the Charges accordingly. The Supplier shall:
- 10.2.1 develop a plan for the improvement within a reasonable time of the Customer's Change Request;
 - 10.2.2 implement the improvement in accordance with the provisions of the Contract; and
 - 10.2.3 submit the improvements to testing in accordance with the provisions of clause 2 of Schedule 3.

11. SUPPLIER ASSETS

- 11.1 The Customer shall be liable for loss of or damage to any of the Supplier's Assets located on Customer Premises which is due to the negligent act or omission of the Customer and the Customer shall indemnify the Supplier against such loss and/or damage.
- 11.2 The Customer shall insure the Suppliers Assets located on Customer Premises against all liability whatsoever arising directly or indirectly out of the possession, use, loss damage or theft of the Suppliers Assets and all loss or damage to the Suppliers Assets from all insurable risks for the full

cost of replacing it, with a reputable insurance company. The Customer shall arrange for Supplier interest in the Suppliers Assets to be endorsed on its insurance policy.

- 11.3 The Customer shall, on request, show the Supplier evidence that such insurance is in place.
- 11.4 The Customer shall inform the Supplier immediately of any insurance claim and the Customer shall not settle any claims without the Supplier's prior agreement.
- 11.5 On termination or expiry of the Contract, the Customer shall be responsible for the removal of all relevant Supplier Assets from the Customer Premises, including the cost of packing, carriage and making good the Customer premises following removal.
- 11.6 For the avoidance of doubt the Customer shall not acquire any right, title or interest in or to the Suppliers Assets.

12. CUSTOMER ASSETS

- 12.1 Where any Customer Assets are made available to the Supplier during the Term, those Customer Assets shall remain the property of the Customer at all times and shall be used by the Supplier only for the purposes of the Contract.
- 12.2 The Supplier shall notify the Customer within thirty (30) days of receipt (or as otherwise agreed between the Parties) where any Customer Asset is not in satisfactory condition when received by or on behalf of the Supplier.
- 12.3 The Supplier shall at all times during the Term, keep a record of any Customer Assets in its possession from time to time and shall make that record available to the Customer upon request by the Customer.
- 12.4 On termination or expiry of the Contract the Customer shall be responsible for the removal of all relevant Customer Assets from the Supplier Premises, including the cost of packing, carriage and making good the Suppliers premises following removal.
- 12.5 The Supplier recommends that the Customer insures the Customer's Assets located on the Supplier Premises against all liability whatsoever due to loss or damage. For the avoidance of doubt, the Supplier will not insure the Customer's Assets located on the Supplier's premises.

13. CHARGING AND INVOICING

- 13.1 The Charges for the Goods and/or Services shall be as stated within the Quotation. Unless otherwise agreed all Charges quoted are valid for 1 day only. Thereafter once accepted by the Customer, the Charges contained within the Contract and be binding on the Parties from the Effective Date.
- 13.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the Charge of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture).

- 13.3 Unless otherwise agreed in writing between the Parties, the Charges shall be invoiced as follows:
- 13.3.1 Professional Service Charges shall be invoiced at 50% on the receipt of the signed Quotation and the remaining 50% on completion or over mutually agreed Stages;
 - 13.3.2 Managed Service Base Charges and Vendor Maintenance shall be invoiced in full on shipment of the Goods;
 - 13.3.3 Managed Service Flex Charges shall be invoiced when they arise;
 - 13.3.4 Goods are invoiced 100% on delivery (whether delivered to Customer Premises or Supplier Premises including any storage or data centre facility);
 - 13.3.5 Circuits shall be invoiced quarterly in advance;
 - 13.3.6 Cloud consumption based charges shall be invoiced monthly in arrears;
 - 13.3.7 Consultancy Credits (pre-paid days) and Training 100% invoiced on receipt of signed Quotation;
 - 13.3.8 Additional Service Charges shall be invoiced when they arise;
 - 13.3.9 All recurring Charges shall be paid by Direct Debit;
 - 13.3.10 The Rapid solution shall be invoiced 100% on acceptance of the signed Quotation (including any set up fees, Goods, Professional Services and Managed Services).
- 13.4 The Services listed in Base Charges are the minimum contractual commitment.
- 13.5 The Customer may increase the Managed Services listed in the Flex Charges up to 20% of the Base Charges. Such increase shall be made in accordance with the Flex Charges pricing and in line with the Standard Change SLA. For the avoidance of doubt, in the event the initial Base Charge is increased to 120%, such increase immediately becomes the new Base Charge.
- 13.6 Managed Service Charges for Software Development Services described in Schedule 7 shall be calculated as follows:
- 13.6.1 If the Software Development Charges at any time during the Managed Service Contract Term are:
 - a. <£100,000 (one hundred thousand) the Managed Service Charges shall be 45% of the Software Development Charges;
 - b. >£100,000 (one hundred thousand) the Managed Service Charges shall be 40% of the Software Development Charges;
 - c. >£200,000 (two hundred thousand) the Managed Service Charges shall be 35% of the Software Development Charges;
 - d. >£300,000 (three hundred thousand) the Managed Service Charges shall be 30% of the Software Development Charges;

- e. >£400,000 (four hundred thousand) the Managed Service Charges shall be 25% of the Software Development Charges;
- f. ≤£400,000 (four hundred thousand) the Managed Service Charges shall be 20% of the Software Development Charges.

Each referred to herein as the Threshold.

- 13.7 The minimum monthly Managed Services Charges for Software Development must be rounded up to £2,000 (two thousand).
- 13.8 For the avoidance of doubt, if the Software Development Charges increase at any point during the Term of the Managed Service Contract (“Compounded Software Development Spend”) so that the Compounded Software Development Spend goes over to the next Threshold the new Managed Service Charges shall apply to the Compounded Software Development Spend and the Managed Service Contract shall re-commence.

For illustration purposes:

- a. the Software Development Charges are £50,000 per annum, the Managed Service Charges are calculated at 45% of £50,000 per annum. This shall be rounded up to £24,000 per annum/ £2,000 minimum spend per month.
 - b. The Software Development Charges increase by £25,000, the Compounded Software Development Spend is £75,000. The new Managed Service Charge is calculated at 45% of the Compounded Software Development Spend of £75,000.
 - c. The Software Development Charges increase again by £50,000, the Compounded Software Development Spend is now £125,000. The new Managed Service Charge shall be calculated as follows: the first £100,000 at 45% and the remaining £25,000 at 40%. The Managed Service Contract shall re-commence.
- 13.9 Unless otherwise agreed in the Contract, reasonable out-of-pocket expenses may be charged by the Supplier on production of reasonable evidence of expenditure to the Customer.
 - 13.10 All quoted Charges are-exclusive of VAT, which shall be invoiced to and paid by the Customer at the rate and in a manner for the time being prescribed by Law.
 - 13.11 In consideration of the provision of the Goods and/or Services the Customer shall pay the Charges in accordance with the terms stated in these Conditions and/or the Contract.
 - 13.12 Unless otherwise agreed in Contract and subject to Customer’s satisfactory credit check, payment is due 30 days from the invoice date (without any deduction or right of set off whatsoever).
 - 13.13 The Supplier reserves the right to change the payment terms and/or invoicing terms, should Customer’s credit adversely change or the Customer persistently fails to fulfil its payment obligation within the agreed payment terms.
 - 13.14 No payment for the Goods and/or Services shall be considered made until received in cleared funds by the Supplier.
 - 13.15 In the event that the Customer amends or cancels the Confirmed Service Date within 14 days prior to that date then the Customer shall be liable to pay the Supplier the following Charges:

- 13.15.1 where the Supplier is not able to utilise its personnel on other chargeable work a full day will be charged at the Suppliers Published Rates; or
- 13.15.2 where the Supplier is able to utilise its personnel on alternative equivalent chargeable work with another customer one quarter of a day will be charged at the Suppliers Published Rates.
- 13.16 Failure by the Customer to pay for part delivery of Goods and/or Services when payment is due shall entitle the Supplier to withhold further delivery of Goods and/or Services without breaching the Contract.
- 13.17 If the Customer shall fail to make any payment by or on its due date then, without prejudice to any other right of the Supplier, the Supplier may apply any payment made by the Customer for the Goods and/or Services (or any other goods and/or services supplied under any other contract between the Customer and the Supplier) as the Supplier may see fit (notwithstanding any purported appropriation by the Customer); and interest shall accrue on a daily basis on the amount outstanding from the due date until payment is received at the rate of 2% per calendar month, accruing daily until the debt is paid in full.
- 13.18 In the event that the Customer uses a finance company to purchase the Goods and/or Services from the Supplier, and such finance company fails to pay the Supplier for the Goods, then the Customer shall be liable to pay the Supplier (on behalf of the finance company) in full for any outstanding Charges.
- 13.19 The Supplier may adjust the price of the Managed Service with effect from the date which is 12 months from the Commencement Date and on each anniversary thereafter (each the 'Anniversary' as appropriate) to reflect increases in the cost of Raw Materials, increases in the Consumer Price Index and any increased power usage costs during the previous year. The Supplier shall give the Customer not less than one month's prior notice in writing of the proposed adjustments. If the Customer objects to a proposed adjustment it shall have the right to write to the Supplier giving reasons for its objections and the Parties shall seek to agree to the price adjustment. In the event that the Parties cannot agree the proposed price adjustment within 15 Working Days of the date on which the Supplier received the written reasons for objection from the Customer the Customer may refer the matter to an 'Independent Expert' (which shall mean an independent firm of chartered accountants agreed on by the Parties, or, if agreement cannot be reached within five Working Days of either Party giving notice to the other that it wishes to refer a matter to an Independent Expert, such independent firm of chartered accountants as may be nominated by the President for the time being of the Institute of Chartered Accountants of England and Wales) who shall determine the appropriate adjustment. If the Customer does not refer the matter to the Independent Expert within five Working Days of it being entitled to refer the matter to the Independent Expert it shall be deemed to accept the price adjustments.
- 13.20 Pending agreement or determination of a proposed adjustment to the prices of the Operational Service the prices then in force shall continue to apply. Once agreement of the price adjustment has been reached or once the Independent Expert determines the appropriate adjustment, the adjusted price shall be deemed to apply with effect from the Anniversary date in respect of which the adjustment relates (the "Anniversary Date"). Within one month of the appropriate adjustment being agreed or determined the Customer shall pay the Supplier any outstanding sums due in respect of its purchases of the Operational Service since the Anniversary Date, together with any applicable VAT.

13.21 To enable the Independent Expert to make a determination in accordance with this clause 13:

13.21.1 the Parties are entitled to make submissions to the Independent Expert and will provide (or procure that others provide) the Independent Expert with all such assistance and documents as the Independent Expert may reasonably require for the purpose of reaching a decision. Each Party shall with reasonable promptness supply the other Party with all information and give access to all documentation and personnel as the other Party reasonably requires to make a submission under this clause 13; and

13.21.2 the Parties agree that the Independent Expert may in its reasonable direction determine such other procedures to assist with the conduct of the determination as it considers appropriate, including (to the extent it considers necessary) instructing professional advisers to assist it in reaching its determination.

14. CHANGE MANAGEMENT PROCESS

14.1 If either Party requests a change to the scope or execution of the Services, via a Change Request, it shall be subject to the Change Management Process.

14.2 Where a change is subject to an Additional Service Charge, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

14.2.1 the likely time required to implement the change;

14.2.2 any Additional Service Charge arising from the Change;

14.2.3 the likely effect of the change on the Contract and if the Contract shall be terminated and the parties shall enter into a new contract or whether the existing contract shall be amended in the form of an addendum;

14.3 In the event the Parties agree to upgrade the Managed Service or add additional hardware to the Supported Assets list, a new Quote for the additional items shall be signed by the Customer.

15. DISPUTES

15.1 The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:

15.2 The Dispute shall be referred, by either Party, first to the Managers of each of the parties for resolution;

15.3 If the Dispute cannot be resolved within 14 days after the Dispute has been referred to the Manager then either Party may give notice to the other Party in writing ("Dispute Notice") that a Dispute has arisen and could not be resolved by the Managers; and

15.4 Within seven Working Days of the date of the Dispute Notice, each Party shall refer the Dispute to a Company Director for resolution.

- 15.5 If the Company Directors are unable, or fail, to resolve the Dispute within 21 Working Days of the date of the Dispute Notice, or within 14 Working Days of the reference to the Company Directors pursuant to this clause 15 the Parties may attempt to resolve the Dispute by mediation.
- 15.6 If within 30 days of the Dispute Notice the parties have failed to agree on a resolution, either Party may refer any Dispute for mediation pursuant to this clause 15 but neither shall be a condition precedent to the commencement of any court proceedings, and either Party may issue and commence court proceedings prior to or contemporaneously with the commencement of mediation. The following provisions shall apply to any such reference to mediation:
- 15.6.1 The reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
- 15.6.2 Both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR Model Mediation Agreement for time being in force; and
- 15.6.3 To the extent not provided for by such agreement of the MMP:
- a. the mediation shall commence by either Party serving on the other written notice setting out, in summary form the issues in Dispute and calling on that other Party to agree the appointment of a mediator; and
 - b. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Parties or, in default of agreement, appointed by CEDR.
- 15.7 If and to the extent that the Parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.
- 15.8 Nothing in this clause 15 shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

16. PERSONNEL

- 16.1 Each Party appoints the persons named as such in the Contract as the 'Customer Representative' and the 'Supplier Representative' respectively. The Representatives shall have the authority to act on behalf of its respective Party on the matters set out in, or in connection with, these Conditions. Either Party may, by further written notice to the other Party, revoke or amend the authority of its Representative or appoint a new Representative.
- 16.2 The respective Representatives shall be sufficiently senior within the organisation (Director level or above) of the appointing Party, and granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of these Conditions.
- 16.3 The Parties agree that any transfer of a contract of employment to the Supplier by reason of the Parties entering into a Contract shall only occur by operation of and in accordance with TUPE.

- 16.4 Without prejudice to any other term of these Conditions, in the event that it is deemed that an employee of the Customer has their contract of employment transferred from the Customer to the Supplier following the commencement of the Contract, the Customer shall be responsible for all Employment Costs in respect of the Transferring Employees up to and including the Relevant Transfer Date and shall indemnify and keep indemnified the Supplier against such Employment Costs.
- 16.5 Without prejudice to any other term of these Conditions, in the event that it is deemed that an employee of the Supplier has their contract of employment transferred from the Supplier to the Customer following termination or expiry of the Contract, the Supplier shall be responsible for all Employment Costs in respect of the Transferring Employees and the Supplier shall indemnify and keep indemnified the Customer (and any replacement supplier) against Employment Liabilities arising as a result of the transfer of the Services.
- 16.6 The relevant Party shall provide to the other Party the Employee Liability Information for the Transferring Employees together with such other information in relation to the Transferring Employees as the other Party may require and the Party providing the information shall ensure that such information is kept up to date up to and including the Relevant Transfer Date.
- 16.7 The relevant Party warrants that in the 6 month period prior to the Relevant Transfer Date (save as disclosed) no changes have been made to the identity of the personnel involved in carrying out the activities which are essentially the same as the Services (or parts of them) and further that no changes have been made to the terms and conditions of employment of any Transferring Employee.
- 16.8 The relevant Party shall indemnify and keep indemnified the other Party against any Employment Liabilities incurred by the other Party arising out of or in connection with:
- 16.8.1 the employment of any Transferring Employee prior to the Relevant Transfer Date;
 - 16.8.2 the termination of employment of any employee of the relevant Party (or of any of its subcontractors) before, on, or after the Relevant Transfer Date.

17. NON-SOLICITATION

- 17.1 The Customer shall not during the Initial Term and/or the Term and/or any Renewal thereafter and for 12 months following the termination or expiry of the Contract either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) or employ or attempt to employ any person from the employment of the Supplier in the provision of the Goods and/or Services, whether an employee or sub-contractor of the Supplier.
- 17.2 If the Customer commits any breach of clause 17.1, the Customer shall, pay to the Supplier a sum equal to 12 months' salary of the Suppliers employee or sub-contractor and any recruitment costs incurred by the Supplier in replacing such person.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 Except as expressly set out in these Conditions:

18.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors (whether created before, during or after the Services), including but not limited to:

18.1.1.1 Supplier Software;

18.1.1.2 Supplier Assets

18.1.1.3 Supplier Know-How;

18.1.1.4 Third Party Hardware or Software;

18.1.1.5 Supplier's Background IPRs,

18.1.1.6 Suppliers Documentation, processes and procedures (including but not limited to, operating manuals, user instructions, technical literature),

18.1.1.7 Suppliers System,

18.1.1.8 Probe,

18.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:

18.1.2.1 Customer Software;

18.1.2.2 Customer Data;

18.1.2.3 Customer's documentation, processes and procedures; or

18.1.2.4 Customer's Know-How.

18.1.2.5 Customer's Database

18.1.2.6 Customer's Background IPRs

18.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made) with full title guarantee.

18.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

18.4 The Supplier shall not be liable for any infringement by the Customer of Intellectual Property Right if the Customer uses Third Party's Software used in a manner other than intended for under the Contract, misuses of Third Party's Software and/or alters Third Party's Software without the Supplier's prior consent. The Supplier warrants that it owns (or is authorised to licence) all Intellectual Property Rights required by the Customer to make full use of the Services. Each Party shall indemnify the other Party against all Loss awarded against or incurred by the other Party in connection with or paid or agreed to be paid by the other Party in settlement of any alleged infringement, whether or not under English law of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services.

19. LICENCES GRANTED BY THE SUPPLIER

- 19.1 Subject to the other provisions of these Conditions, the Supplier hereby grants, or shall procure the direct grant, to the Customer of a licence on a non-exclusive basis to Use the Supplier's Background IPRs and the Suppliers Software during the Initial Term, and/or Term, and/or Renewal to the extent necessary for the performance of the Services.
- 19.2 In the event of the termination or expiry of the Contract, the licence referred to and granted in accordance with this clause 19, shall terminate automatically and the Customer shall deliver to the Supplier all Background IPRs licensed in its possession or control.

20. LICENCES GRANTED BY THE CUSTOMER

- 20.1 The Customer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Initial Term, or Renewal or Term (whichever is applicable, in the sole discretion of the Supplier), to Use:
- 20.1.1 Customer's software;
 - 20.1.2 Customer's documentation, processes and procedures;
 - 20.1.3 Customer's Know-How; and
 - 20.1.4 Customer's data.
- 20.2 The licence granted in clause 20.1:
- 20.2.1 includes the right to grant sub-licences to Subcontractors provided that any relevant Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in clause 22; and
 - 20.2.2 is granted solely to the extent necessary for performing the Services in accordance with these Conditions. The Supplier shall not use the licensed materials for any other purpose or for the benefit of any person other than the Customer.
- 20.3 In the event of the termination or expiry of the Contract, the licences and any sub-licences referred to and granted in accordance with this clause 20, shall terminate automatically and the Supplier shall deliver to the Customer all material licensed in its possession or control.

21. CUSTOMER DATA

- 21.1 The Parties shall comply with the data protection provisions set out in Schedule 8 to these Conditions.

22. CONFIDENTIALITY

- 22.1 Except to the extent set out in this clause 22 or where disclosure is expressly permitted elsewhere in these Conditions, each Party shall:

- 22.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 22.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

22.2 Clause 22.1 shall not apply to the extent that:

- 22.2.1 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 22.2.2 such information was obtained from a third party without obligation of confidentiality;
- 22.2.3 such information was already in the public domain at the time of disclosure otherwise than by a breach of these Conditions;
- 22.2.4 it is independently developed without access to the other Party's Confidential Information; or
- 22.2.5 such disclosure is otherwise required pursuant to a legal or regulatory obligation.

22.3 The Supplier may only disclose the Customer's Confidential Information to the Supplier Personnel who need to know the information, and shall ensure that such Supplier Personnel are aware of, acknowledge the importance of and comply with these obligations as to confidentiality.

23. ANTI-BRIBERY

23.1 The Supplier shall:

- 23.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (Relevant Requirements);
- 23.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 23.1.3 have and maintain in place throughout the term of any Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and shall enforce them where appropriate;
- 23.1.4 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 the Contract;
- 23.1.5 immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier and/or acquires a direct or indirect interest in the Supplier (and the Supplier warrants and represents that it has no foreign public officials as officers or employees AND/OR direct or indirect owners at the date of the Contract);

23.2 The Supplier shall ensure that any person associated with the Supplier or who is otherwise performing services in connection with the Contract does so only on the basis of a written contract that imposes on and secures from such person terms equivalent to those imposed on the Supplier in these Conditions (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 23, 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 23 a person associated with the Supplier also includes any sub-contractor of the Supplier.

24. ANTISLAVERY AND HUMAN TRAFFICING

- 24.1 In performing its obligations under the agreement, the Supplier shall:
- 24.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
 - 24.1.2 have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance;
 - 24.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - 24.1.4 require that each of its direct subcontractors and suppliers shall comply with the Anti- slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015.
- 24.2 The Supplier represents and warrants that neither the Supplier nor any of its officers, employees:
- 24.2.1 has been convicted of any offence involving slavery and human trafficking; and
 - 24.2.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 24.3 The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-Slavery policy available to the Customer upon request.

25. WARRANTIES

- 25.1 The Customer warrants, represents and undertakes that:
- 25.1.1 it has the full capacity and authority to enter into and perform the Contract and that it is executed by a duly authorised representative of the Customer;
 - 25.1.2 it has the authority to grant any rights to be granted to the Supplier under these Conditions;
 - 25.1.3 it shall comply with and use the Services in accordance with these Conditions, the Contract and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws;
 - 25.1.4 the Supplier's possession and use in accordance with these Conditions of any materials (including third-party materials supplied by the Customer to the Supplier) shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.
- 25.2 The Supplier warrants, represents and undertakes that:
- 25.2.1 it has the full capacity and authority to enter into and perform the Contract and that it is executed by a duly authorised representative of the Supplier;
 - 25.2.2 it owns, or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with the Contract and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under the Contract 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;
- 25.2.3 it shall comply with all applicable laws and regulations in performing its obligations under the Contract;
- 25.2.4 it is and shall remain throughout the term of the Contract compliant (and certified by an independent, reputable and competent certification body to be compliant) with a then-current version of International Standards Organisation (ISO) 27001, ISO 9001, ISO 14001;
- 25.2.5 the Customer's possession and use in accordance with the Contract of any materials (including third-party 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;
- 25.2.6 all personnel and sub-contractors used by the Supplier in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform.
- 25.3 The warranties set out in clause 25 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to these Conditions and/or the Contract. Without limitation, the Supplier specifically denies any implied or express representation that the Goods and/or Services (including Customer Operating Environment):
- 25.3.1 operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified by the Supplier as being compatible with the System; or
- 25.3.2 Customer's use of the Goods and/or Services will be uninterrupted or error-free. Or warrant that the Goods and/or Services will operate without interruption or error.
- 25.4 The Supplier does not warrant or guarantee that it will be able to rectify all defects, nor that any defect which does not materially affect the Customer's operations using the supported software will be corrected before the issue of the next software release.
- 25.5 Any unauthorised modifications, use or improper installation of the System by or on behalf of the Customer shall render all the Supplier's warranties and obligations under these Conditions.

26. FORCE MAJEURE

- 26.1 Subject to the remaining provisions of this clause 26, either Party to the Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event ("the Affected Party").
- 26.2 In the event that either Party is delayed or prevented from performing its obligations under the Contract by a Force Majeure Event, such party shall:
- 26.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof its estimated duration;
- 26.2.2 use reasonable endeavours to mitigate the effects of such delay or prevention of the performance of its obligations under the Contract; and

- 26.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 26.3 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Contract.
- 26.4 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract. Following such notification, these Conditions shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event, unless agreed otherwise by the Parties.

27. LIMITATIONS ON LIABILITY

- 27.1 Except as expressly and specifically provided in these Conditions or Special Terms and Conditions, this clause 27 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and Subcontractors) to the Customer in respect of:
- 27.1.1 Any breach of these the Contract;
 - 27.1.2 any use made by the Customer of the Goods and/or Services; and
 - 27.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 27.2 Except as expressly and specifically provided in these Conditions:
- 27.2.1 the Customer assumes sole responsibility for results obtained from the use of the Goods and/or 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 Service or any action taken by the Supplier at the Customers direction; and
 - 27.2.2 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by Law, excluded from the Contract. Customer agrees that it had considered its need for remedies and has obtained all remedies it requires from the Supplier in the Contract and thus the foregoing exclusion is fair and reasonable.
- 27.3 Nothing in these Conditions excludes or limits the liability of either Party for:
- 27.3.1 Death or personal injury caused by its negligence;
 - 27.3.2 fraud or fraudulent misrepresentation: or
 - 27.3.3 any other liability which cannot lawfully be excluded or limited.
- 27.1 Subject to clause 27.3:
- 27.1.1 The Supplier shall not in any circumstances be liable whether in tort (including for negligence or breach of statutory duty, however arising), contract , misrepresentation (whether innocent or negligent), or otherwise for; any loss of profits, loss of business, depletion of goodwill or similar

losses, loss of anticipated savings, loss of Contract, loss of use, loss or corruption of Data or information or any pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and this limitation applies even if the loss was foreseeable or in the contemplation of either party;

- 27.1.2 the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty, however arising), misrepresentation (whether innocent or negligent) restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or otherwise arising in favour of the Customer shall be limited to the annual value of the Services.

28. TERMINATION AND SUSPENSION

- 28.1 Without prejudice to any other rights or remedies to which the Supplier is entitled, the Supplier shall be entitled to terminate the Contract in part or in full and/or suspend any of the Services or delivery of Goods forthwith by notice in writing in the following circumstances:
- 28.1.1 whereby the Supplier deems it necessary to enter into a new Contract under the Change Management Process, subject to the agreement of both parties;
 - 28.1.2 If the Customer fails to pay an undisputed sum due to the Supplier within 30 days from the notification sent by the Supplier informing of the outstanding amounts;
 - 28.1.3 If the Customer commits any breach of these Conditions incapable of remedy or which if the same be capable of remedy it fails to remedy within 14 days of the Supplier's written notice;
- 28.2 The Supplier shall, without prejudice to its right to terminate, be entitled to suspend further provision of the Services if an event mentioned in this clause 28 occurs.
- 28.3 Notwithstanding any termination or suspension the Customer shall pay to the Supplier all Charges which fell due for payment prior to termination or suspension (including the Charges for the period whilst the Services were suspended) in full without refund including sums for Services already provided to the date of such termination or suspension. In addition the Customer shall indemnify the Supplier against any resulting loss by the Supplier as a result of the early termination of the Contract due to a Customer Cause.
- 28.4 Either party may terminate the Contract by giving written notice to the other party if any of the following events occurs:

- 28.4.1 a winding-up order or bankruptcy order is made against the other party; or
 - 28.4.2 the other party passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or
 - 28.4.3 the other party has appointed to it an administrator or an administrative receiver; or being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or
 - 28.4.4 being a partnership in addition to the above, suffers bankruptcy orders being made against all of its partners.
 - 28.4.5 an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the other party's assets;
 - 28.4.6 the other party ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
 - 28.4.7 any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into; or
 - 28.4.8 the other party ceases, or threatens to cease, to carry on business; or
 - 28.4.9 any event analogous to those described in clause 28.4.1 to clause 28.4.8 occurs in relation to the other party in any jurisdiction in which that other party is incorporated, resident or carries on business.
- 28.5 Clause 28.4 shall not apply in circumstances where the insolvent business is sold as a going concern within 30 days from an appointment of an administrator (i.e. in circumstances where the insolvent business is sold as a pre-pack in administration).
- 28.6 If the Supplier commits a material breach of the Services and the breach is capable of remedy, the Customer may not terminate the Services in whole or in part without first operating the Remedial Plan Process. The Remedial Plan Process is as follows:
- i) The Customer notifies the Supplier that it considers that the Supplier is in material breach and that it requires a Remedial Plan. The notice may specify the matters complained of it outline but must contain sufficient details so that it is reasonably clear what the Supplier has to remedy;
 - ii) The Supplier shall serve on the Customer a draft Remedial Plan within 10 Working Days (or any other period agreed by the Parties);
 - iii) If a Remedial Plan is agreed between the Parties but the Supplier fails to implement the Remedial Plan within the time period agreed in the Remedial Plan or otherwise fails to remedy the material breach the Customer may, without limiting its other rights or remedies terminate the Service by written notice.
- 28.7 Termination of the Contract, howsoever arising, shall not affect or prejudice the accrued rights of the Parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 28.8 The provisions of clauses 17 (Non-Solicitation), 18 (Intellectual Property Rights), 19 (Licences Granted by the Supplier), 21 (Customer Data), 22 (Confidentiality), 25 (Warranties), 27 (Limitations on Liability), 33 (Severance), 35 (Entire Agreement), 36 (Third Party Rights) and 39 (Governing Law and Jurisdiction), shall survive the termination or expiry of the Contract.

29. EXIT

- 29.1 In the event of the termination or expiry of the Contract for any reason the Supplier shall provide Exit Assistance Services to the Customer in accordance with the requirements of the Exit Plan jointly agreed between the parties. If the Parties are unable to agree the contents of the Exit Plan, either Party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.
- 29.2 The Customer shall pay the Exit Assistance Service Charges in respect of the provisions of the Exit Assistance Service.
- 29.3 For the avoidance of doubt, the Contract shall be active until the completion of the Exit Assistance Services.

30. ASSIGNMENT

- 30.1 The Supplier may at any time assign, novate, transfer, charge, subcontract or deal in any other manner, or otherwise dispose of or create any trust in relation to all or any of its rights or obligations under these Conditions without the consent of the Customer.
- 30.2 The Customer shall not, without the consent of the Supplier, assign, novate, transfer, charge, subcontract or deal in any other manner, or otherwise dispose of or create any trust in relation to all or any of its rights or obligations under the Contract.

31. WAIVER AND CUMULATIVE REMEDIES

- 31.1 The rights and remedies provided by the Contract may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 31.2 Unless a right or remedy of either Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 31.3 The rights and remedies provided by the Contract are cumulative and, unless otherwise provided in these Conditions, are not exclusive of any right or remedies provided at Law or in equity or otherwise under the Contract.

32. RELATIONSHIP OF THE PARTIES

- 32.1 Nothing in the Contract is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

33. SEVERANCE

- 33.1 If any provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining

provisions. If a provision of these Conditions that is fundamental to the accomplishment of the purpose of the Contract is held to any extent to be invalid, the Supplier and the Customer shall immediately commence good faith negotiations to remedy that invalidity.

34. FURTHER ASSURANCES

34.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

35. ENTIRE AGREEMENT

35.1 These Conditions, together with the Schedules and the Contract, constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

35.2 Each of the Parties acknowledges and agrees that in entering into the Contract does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in these Conditions. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of Contract under the terms of these Conditions.

35.3 Nothing in these Conditions and/or the Contract shall operate to exclude or limit any liability for fraud.

36. THIRD PARTY RIGHTS

36.1 These Conditions are not intended to and do not give any person who is not a Party to these Conditions any rights to enforce any provisions contained in these Conditions (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

37. NOTICES

37.1 Any notices given under or in relation to these Conditions shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by, recorded delivery, or by email, to the address or email address and for the attention of the relevant Party notified for such purpose or to such other address as that Party may have stipulated in accordance with this clause 45.

37.2 notice shall be deemed to have been received:

37.2.1 if delivered personally, at the time of delivery;

37.2.2 in the case of recorded delivery, two Working Days from the date of posting; and

37.2.3 in the case of email at the time of despatch.

37.3 To prove service it is sufficient to prove that:

- 37.3.1 if sent by recorded delivery post, the envelope containing the notice was properly addressed and posted; or
- 37.3.2 if sent by e-mail, that the notice was sent (in plain text) to the e-mail address of the Party (using delivery receipt), the highest importance level option for delivery and marking the subject header of the e-mail "Important Legal Notice".

38. ORDER OF PRECEDENCE

- 38.1 If there is any conflict between the clauses of these Conditions, between the Schedules and/or the Contract the following order of precedence shall apply:
 - 38.1.1 Quotation;
 - 38.1.2 the clauses of the Cloud Agreement as contained in Schedule 6 (if applicable);
 - 38.1.3 the Service Schedules in respect of the Services listed in the Quotation;
 - 38.1.4 the clauses of these Conditions and Schedule 1;
 - 38.1.5 the SDD (as applicable to the Service purchased);
 - 38.1.6 the SOW;
 - 38.1.7 remaining Schedules

39. GOVERNING LAW AND JURISDICTION

- 39.1 The Contract shall be governed by and construed in accordance with English law and each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

40. Schedule 1 - Definitions

Term	Definition
“Acceptance Test”	The tests carried out by the Supplier and Customer to ascertain whether the Acceptance Tests Criteria have been met;
“Acceptance Tests Criteria”	The criteria mutually agreed between the Parties prior to the Implementation Stage of the Professional Services against which the Supplier shall perform Acceptance Test;
“Additional Service Charge”	A Charge relating to any Additional Services, at the Suppliers Published Rates unless otherwise agreed;
“Additional Services”	Any services not covered within the Contract;
“Affected Party”	The Party seeking to claim relief in respect of a Force Majeure Event;
“Assumptions”	Actions performed by the Customer that the Supplier relies upon to perform the Services as described in the Contract;
“Authorised Users”	Those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation;
“Background IPR”	Any and all IPRs that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Effective Date or otherwise);
“Backlog”	The specification agreed between the Customer and the Supplier which sets out the Customer’s business requirements regarding the Supplier Software;
“Base Charges”	The Charges for Managed Services as listed in the Quotation which are contractually committed and cannot be reduced;
“Bespoke Software”	Software programs developed by the Supplier specifically for the Customer as part of the Supplier Software and described in the Release Plan;
“Business Critical Issues”	An Incident which, in the opinion of the Supplier having performed an Impact Assessment, is materially affecting the operation of the Customer’s business;
“Change Management Process”	A process governing any changes to the Services, as set out in Schedule 2;
“Change Request”	A request for a change in the Services;
“Charges”	Any amounts due to the Supplier for Goods and/or Services, as set out in the relevant Quotation;

<p>“Commencement Date”</p>	<p>The date of the commencement of the Relevant Services. The Commencement Date for a Managed Service on Supported Assets shall be the date the Goods (or part of them) are shipped (in such instances the date will be confirmed on delivery note) or the date the first virtual resource(s) are provisioned for Customer’s use.</p> <p>For cloud subscriptions the Commencement Date will be the date the subscription account is created.</p> <p>For WAN/LAN the Commencement Date shall be the date the circuits are installed as notified by the circuits provider.</p> <p>The Supplier will confirm the Commencement Date in writing;</p>
<p>“Company Director”</p>	<p>A member of the board of directors of a company, appointed or elected to control and govern the affairs and policies of a corporation;</p>
<p>“Conditions”</p>	<p>These standard terms and conditions including the Schedules;</p>
<p>“Confidential Information”</p>	<p>All information or data disclosed (whether in writing, orally or by any other means) to one party by the other party or by a third party on behalf of the other party and shall include but not be limited to (A) any information ascertainable by the inspection or analysis of samples, (B) the information described in these Conditions as having been disclosed prior to the date hereof and (C) any information relating to that party’s business, operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customers and business affairs, IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not marked "confidential") or which ought reasonably be considered to be confidential;</p>
<p>“Confirmed Service Date”</p>	<p>The date for delivery of the Professional Services agreed by the Parties at a project initiation meeting;</p>
<p>“Contract”</p>	<p>Customer’s acceptance of the Quotation and the SDD referenced in it (if applicable), SOW, Release Plan as defined in Schedule 7 and any addendum to the Contract if agreed by the Parties;</p>
<p>“Customer”</p>	<p>The person, firm or company detailed in the Quotation;</p>

“Customer Assets”	Means the Customer’s infrastructure and any other data, software, assets, Goods, Equipment which is either owned or leased by the Customer and which is or may be used in connection with the Services;
“Customer Cause”	Any breach by the Customer of any of these Conditions and/or the Contract and/or Customer’s default. This includes any default by any party engaged by the Customer;
“Customer Data”	(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and/or; (b) any Personal Data for which the Customer is Data Controller in each case which are: (i) supplied to the Supplier by or on behalf of the Customer; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to these Conditions;
“Customer Operating Environment”	The Customer’s computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Service and which interfaces with the Supplier’s System in order for the Customer to receive the Services;
“Customer’s Responsibilities”	The responsibilities of the Customer as specified in the Contract or as set out in Clause 8 of these Conditions;
“Data”	Means data in its electronic form, stored and processed by a computer, including but not limited to individual files, folders, databases and virtual machines;
“Demarcation Zone”	The demarcation of where the Services are performed, as defined in the SDD;
“Deployment Date”	The estimated date by which the Supplier will complete installation of a specified Software Module as specified in the Implementation Plan;
“Dispute”	Any dispute, difference or question of interpretation arising out of or in connection with these Conditions and/or the Contract, including any dispute, difference or question of interpretation relating to the Services, any matter where these Conditions directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Resolution Procedure”	The dispute resolution procedure set out in clause 15 (Disputes);
“Effective Date”	The date when the Contract comes into force and is binding upon both Parties. The effective date shall be the date the Quotation in signed by the Customer;
“Emergency Maintenance”	Any maintenance where repair is needed urgently;

<p>“Employee Liability Information”</p>	<p>the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE:(a) the identity and age of the employee; and(b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and(c) information about any disciplinary action taken against the employee and any grievances raised by the employee, relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and(d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought; and(e) information about any collective agreement that will have effect after the Effective Date in relation to the employee under regulation 5(a) of TUPE;</p>
<p>“Equipment”</p>	<p>Any hardware or software which the Supplier rents out to the Customer in accordance with clause 6 of these Conditions;</p>
<p>“Exclusions”</p>	<p>Any service which is outside the scope of the Contract as listed in the relevant Contract;</p>
<p>“Exit Assistance Services”</p>	<p>Services provided by the Supplier to the Customer in the event of the expiry or termination of Managed Service (for any reason whatsoever) to facilitate the transfer of the Services to the Customer or a Replacement Supplier;</p>
<p>“Exit Assistance Service Charges”</p>	<p>The Charges payable by the Customer to the Supplier for the provision of the Exit Assistance Services at the Suppliers Published Rates;</p>
<p>“Exit Plan”</p>	<p>The plan for the provisions of the Exit Assistance Services in the event of the expiry or termination of a Managed Service for any reason, which is to be developed by the parties pursuant to clause 29;</p>
<p>"Flex Charges"</p>	<p>The Charges listed in the Contract which can be flexed up or down depending on the Customer's usage and requirements. The Flex Charges will be levied if any of Services listed in the SDD are used or provisioned for use at any time within a calendar month. For the avoidance of doubt where a Service is used or provisioned for use in a calendar month a Charge will be levied for the whole of that month.</p>

<p>“Force Majeure Event”</p>	<p>Any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including but not limited to; strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, interruption, shortage or regional or national failure of power supplies or disruption to networks, difficulty, delay or failure in manufacture, production or supply by third parties of any Goods or Services (to the extent that such difficulty, delay or failure was caused by a Force Majeure Event affecting that party), act of God, war, riot, civil commotion, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, Force Majeure Event of the Supplier’s third party vendors and subcontractors, and any act or omission of Microsoft, Google and AWS that cannot be mitigated by the Supplier;</p>
<p>“Goods”</p>	<p>Means any apparatus goods (not being the Equipment) purchased by the Customer;</p>
<p>“Health Check”</p>	<p>A system review of the Supported Assets by the Supplier in order to ensure Customer Operating Environment is capable of being supported by the Managed Service;</p>
<p>“Impact Assessment”</p>	<p>Within the Supplier’s sole discretion, the determination of the impact of an Incident on the Customer Operating Environment;</p>
<p>“Incident”</p>	<p>An unplanned interruption to the Customer Operating Environment;</p>
<p>“Initial Term”</p>	<p>The duration of the Managed Services commencing on the Commencement Date as detailed in the Contract;</p>
<p>“Intellectual Property Rights” or “IPRs”</p>	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p>

	(c) all other rights having equivalent or similar effect in any country or jurisdiction;
“IPR Claim”	Any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations;
“Know-How”	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier’s or the Customer’s possession before these Conditions and/or Contract;
“Law”	Any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
“Licensed Software”	The Supplier Software as specified in the Release Plan (except any Open-Source Software) and all subsequent amendments and updates;
“Managed Services Handbook”	The document providing the customer with detailed processes and procedures relating to the Managed Service. The Managed Services Handbook does not form part of the Contract and may be updated by the Supplier at any time;
“Managers”	The personnel with management responsibility (excluding Directors) within both the Customer and Supplier;
“Modified Software”	The standard software programs proprietary to the Supplier and/or third parties listed in the Release Plan, modified or to be modified by the Supplier under the Contract;
“Named Contacts”	The persons who are authorised to notify the Supplier of an Incident, for the avoidance of doubt the Supplier will only supply Service to the Named Contacts and only when the persons’ identity can be verified;
“New Release”	A new release of all or any part of the Supported Software suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added;
“New Version”	A new version of the Licensed Software released by the Supplier after the Acceptance Date which provides additional or improved functionality or performance;

“Open-Source Software”	Any software licensed under any form of open-source licence meeting the Open Source Initiative’s Open Source Definition (http://www.opensource.org/docs/definition.php) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at http://www.gnu.org/licenses/gpl.html), or anything similar, included or used in, or in the development of, the Supplier Software, or with which the Supplier Software is compiled or to which it is linked;
“Parties”	Means the Customer and the Supplier, and includes their permitted successors and assigns;
“Premises”	Locations from and to which Goods and/or Services are to be provided;
“Pre-Requisites”	A customer responsibility as detailed in the Contract that have to be fulfilled prior to the commencement of the Services;
“Priority”	The priority and category given to an Incident, following an Impact Assessment;
“Probe”	The software, and all associated Data provided and collected, installed for the Supplier at the Customer Premises for the specific purposes of monitoring and maintaining the Supported Assets;
“Professional Services”	The consultancy Services described in the SOW;
“Published Rate”	The Suppliers normal Charges as located within the Managed Services Handbook or otherwise documented as amended from time to time at the sole discretion of the Supplier;
“Quotation”	Document signed or authorised by the Customer detailing the Goods and/or Services to be supplied;
“Raw Materials”	Including, but not limited to licences and 3rd party software costs, 3rd party rent and utility costs within the Operational Services;
“Release Date”	The estimated delivery date specified in the Release Plan on which the Supplier will deliver or deploy said Release;
“Release Plan	the software implementation plan as agreed between the Parties (also referred to as Sprint Plan);
“Release Requirements”	The specification agreed between the Customer and the Supplier which sets out the technical requirements regarding the Supplier Software and contained within the Release Plan;
“Renew”, “Renewal”	The automatic extension of the Operational Services after expiry of the Initial Term as defined in clause 1.12 of Schedule 4 of these Conditions;

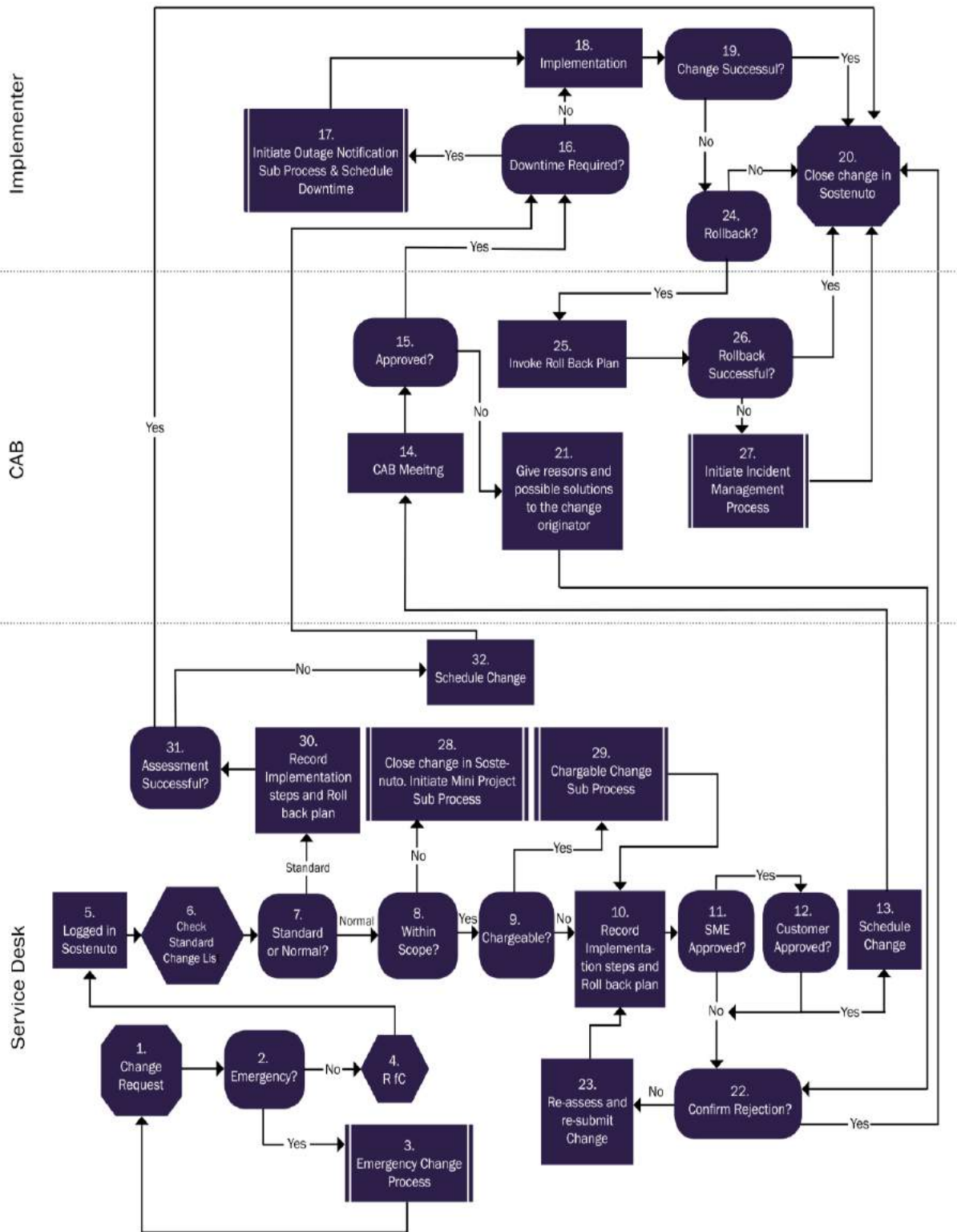
“Replacement Services”	Any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of the Contract;
“Replacement Supplier”	Any third-party service provider of Replacement Services appointed by the Customer from time to time;
“Resolution”	The time from an Incident being logged by the Customer to request an assistance to the time that the Supplier is able to re-establish the impaired service or provide a work around it as detailed in the SDD;
“Response”	In relation to an Incident, it shall mean the time from an Incident being logged by the Customer to request an assistance to the time that the Supplier responds with a suitably qualified Employed person whether via a telephone call, email or in person; In relation to a Change Request it shall mean the time from the Change Request being made by the Customer to the time the Supplier provides an estimate of the time required to perform the change;
“Retail Price Index”	The Retail Price Index (all items, excluding mortgages) as published by the Office of National Statistics from time to time, or failing such publication that other index as the parties may agree most closely resembles such index;
“Scheduled Maintenance”	Any work scheduled in advance that is required to be carried out which will cause the Services to be suspended. The Supplier shall provide a reasonable notice to the Customer as to when the maintenance should take place;
“Service Credits”	Means any credits payable to the Customer in the event of a Service Level Failure;
“Service Definition Document” “(SDD)”	The Document detailing the scope of the Operational Services and the obligations of the Supplier and Customer as specified in the SDD, updated as agreed between the Parties from time to time;
“Service Failure”	A failure of the Supported Assets resulting in an Impact on the Customer Operational Environment;
“Service Hours”	The time within which the Managed Services shall be available to the Customer as provided within the SDD;
“Service Level Failure”	Failure by the Supplier to meet the Service Levels;
“Service Levels”	The service levels to which the Managed Services are to be provided as set out in the SDD;
“Services”	The services to be delivered by or on behalf of the Supplier under the Contract pursuant to these Conditions, including the Professional Services, the

	Managed Services, Software Development any agreed Exit Assistance Services and/or any Additional Services. Service means any of the Services (or any part of any of them);
“Stage”	Each of the Professional Services as identified in the SOW;
“Software”	Any software applications or scripting provided by the Supplier as part of the Services;
“Software Defect”	An error in the Supported Software that causes it to fail to accomplish outcomes specified in any associated User Stories;
“Software Ready for Deployment”	Tested and having passed or deemed to have passed the Acceptance Tests and User Acceptance Tests;
“Software Ready for Testing”	Internally tested and deemed ready for User Acceptance Testing;
“Software Module”	Any one of the individual software programs in the Supplier Software;
“Source Code”	The source code of the software to which it relates, in the language in which the software was written, together with all related documentation of a level sufficient to enable competent development personnel to understand said software;
“Statement of Work” “(SOW)”	The document detailing the Professional Services (including any other documents referred to within the SOW) updated as agreed between the Parties from time to time;
“Supplier”	Means ANS Group Limited incorporated and registered in England and Wales with company number 3176761 whose registered office is situated at Synergy House, Guildhall Close, Manchester or any of its group companies;
“Supplier Assets”	Means all assets and rights (whether owned, leased or otherwise) used by the Supplier to provide the Services in accordance with the Contract; including but not limited to the hardware, computer and telecoms devices and equipment supplied (but not hired, leased, loaned or sold to the Customer) by the Supplier or its sub-contractors for the provision of the Services;
“Supplier Background IPR”	IPRs proprietary to the Supplier which is or will be used by the Supplier for the purposes of providing the Services which comprise: (a) IPRs owned by the Supplier before the Effective Date, for example those subsisting in the Supplier’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier’s Know-How or generic business methodologies; and/or

	(b) IPRs created by the Supplier independently of these Conditions, but excluding IPRs owned by the Supplier subsisting in the Supplier Software;
“Supplier Documentation”	Including but not limited to; descriptions of the Services and Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: (a) is required to be supplied by the Supplier to the Customer under these Conditions; (b) is required by the Supplier in order to provide the Services; or (c) has been or shall be generated for the purpose of providing the Services;
“Supplier Sales and Marketing Documents”	The documents and/or information that the Supplier may provide to the Customer in relation to the Goods and/or Services, including but not limited to proposal’s, leaflets, documents Suppliers website, Supplier Welcome Pack, Managed Services Handbook;
“Supplier Software”	The software which is owned or licensed by the Supplier and which is to be used by the Supplier and/or the Customer in the context of the provision or receipt of any of the Services, it includes the Supplier Standard Software, the Modified Software, the Open-Source Software and the Bespoke Software;
“Supplier Standard Software”	The software programs proprietary to the Supplier, listed in the Release Plan, which are to be provided to the Customer with no or minimal modification;
“Supplier System”	The information and communications technology system to be used by the Supplier in performing the Managed Service, including the Software, Suppliers Assets and communications links between the Suppliers Assets;
“Supported Assets”	Customer Assets, Supplier Assets or otherwise as determined by the Supplier, that the Services are performed upon;
“Target Resolution Time”	The time period within which the Supplier sets a target to provide a resolution as detailed in the applicable SDD. The Customer accepts that due to the nature of the Services provided the Supplier will, but is not under any obligation to, use its reasonable endeavours to provide the Services a Target Resolution Time;
“Technical Advice”	The advice given relating to the Suppliers obligations as detailed in the Contract;

“Tests”	The tests to be carried out throughout the course of and following completion of the development activities by the Supplier;
“Third Party Software”	Software and any documentation which is proprietary to any third party;
“Training”	The transfer of knowledge, skills and competencies from the Supplier via vocational or practical methods;
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);
“Use”	With respect to each of the following IPRs and, in each case, in connection with the Services:a. the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) the Third Party Software and the Suppliers Background IPRs;b. the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate and otherwise utilise the Suppliers Software;
“User Acceptance Tests”	The tests to be carried out on the Software Ready for Testing by the Customer;
“VAT”	Value added tax as provided for in the Value Added Tax Act 1994;
“Vendor Maintenance”	Relates to hardware and software support provided by the applicable third party vendor. This support usually includes the ability to request replacement hardware components and/or software updates. Included services vary depending on the third party vendor involved;
“Working Day”	Any day other than a Saturday, Sunday or public holiday in England and Wales.

41. Schedule 2 - Change Management Process



42. Schedule 3 - Professional Services

1. PROFESSIONAL SERVICES

- 1.1 The Supplier shall provide a draft Statement of Work (SOW) for Customer's review and the Customer shall within two Working Days provide comments on such proposed SOW to the Supplier. The Supplier will then provide a final version of the SOW within two Working Days following receipt of Customer's feedback. The Customer shall sign the final SOW within no later than 1 working day. Otherwise the final SOW as provided by the Supplier shall be deemed accepted.
- 1.2 The Professional Service shall commence within ten Working Days following receipt of the signed Quotation unless the Supplier deems it necessary to commence later.
- 1.3 The Supplier shall use its reasonable endeavours to provide the Professional Services in all material respects in accordance with the SOW.
- 1.4 If any delay to the Professional Service is caused by the Customer, the Supplier shall reserve the right to charge the Customer for additional Consultancy Days used to complete the Project. Such additional Charges shall be calculated on a man-day basis at the full day-rate in accordance with the Supplier's standard pricing. If any delay is caused solely by the Supplier, the Supplier shall (at its own cost) provide such additional consultancy days as it is required in order to complete the Project by mutually agreed date.
- 1.5 In the event the Customer is preventing the Supplier from carrying out the Project as planned, the Supplier reserves the right to invoice the Customer for the remainder of the Charges in respect of the Project.
- 1.6 For Projects undertaken on a time & materials basis, Professional Services is charged on a man-day basis at a full day-rate specified. The number of man-days quoted in the Contract is an estimate of the time required to complete the tasks in the SOW. Reasonable endeavours will be maintained to achieve completion of the tasks within the timeframe quoted. Where additional consultancy days are required, the Customer may purchase such additional Consultancy Days.
- 1.7 The Parties shall co-operate with each other in connection with the transition and migration of any of the Customer's Data. The Parties agree, that where there is a transition to the provision of the Managed Service, there may be a reasonable disruption to the Customer's business. The Supplier shall use reasonable efforts to ensure the accurate migration of any Data but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be responsible for checking the accuracy and completeness of any migrated Data and shall promptly give sufficient details to the Supplier of any inaccuracies or omissions in order to permit the Supplier to correct them. The Customer shall also ensure that they take adequate back up of the Data prior to such transition.
- 1.8 Consultancy Days can be used by the Customer within 12 months from the Effective Date of the Quotation. It is Customer's responsibility to ensure that such Consultancy Days are booked with the Supplier at least three calendar months prior to their expiry.

2. ACCEPTANCE TEST

- 2.1 The Supplier shall provide the Customer with its intended Acceptance Test Criteria within a reasonable time prior to the Implementation Stage of the Project.
- 2.2 If testing and handover of a solution is not completed before the Customer commences use of the solution in a production environment then the Supplier shall not be liable for any adverse consequences, including but not limited to adverse impact on the Supplier's ability to complete the

Project. Additional Charges may be incurred by the Customer if extra work is required from the Supplier as a result of such adverse impact.

- 2.3 The Customer shall ensure it is present whilst the Supplier conducts the Acceptance Tests, however if the Customer decides not to, it will be assumed that the Customer has witnessed the Acceptance Tests. If, in the reasonable opinion of the Parties, as determined during the Acceptance Test, the Professional Services or a relevant Stage meets all of the Acceptance Tests Criteria, the Acceptance Tests will be considered successful. Following the successful Acceptance Tests, the Supplier shall issue an Acceptance Test Certification for Customer's signature. The Customer shall not unreasonably delay, or withhold the signature on the Acceptance Test Certificate.
- 2.4 If in the reasonable opinion of the Parties as determined during the Acceptance Test, the Professional Services or the relevant Stage fails to meet any of the Professional Services Criteria, the Supplier will remedy the failures and conduct further testing in accordance with this clause 2 of this Schedule 3.
- 2.5 If the Customer does not provide a signed Acceptance Tests Certificate within 5 Working Days of the successful completion of the Acceptance Tests Criteria as described in clause 2.3 of this Schedule 3 then the Professional Services or the relevant Stage shall be deemed accepted.
- 2.6 Each Party shall bear its own costs in respect of Acceptance Tests.
- 2.7 Any Disputes arising out of this clause 8 shall be resolved through the Dispute Resolution Procedure. Pending a resolution of the Dispute both Parties shall continue to attempt to resolve the causes of, and mitigate the effects of, any delay or otherwise in the provision of the Professional Services.

43. Schedule 4 - Managed Services

1. MANAGED SERVICES

- 1.1 The Supplier shall use its reasonable endeavours to supply to the Customer the Managed Service during the Service Hours pursuant to the Service Definition Document (SDD) from the Commencement Date.
- 1.2 In the event the Supplier provides the Managed Service on Customer's existing infrastructure, the Supplier may do a technical audit on Customer's infrastructure during an on-boarding process. The Supplier may require the Customer to remedy any defects prior to the commencement of the Managed Services.
- 1.3 The Supplier shall not be liable for any failure to provide the Managed Service on the Supported Assets which are not currently supported by the Vendor. For the avoidance of doubt, it is Customer's responsibility to ensure that all Supported Assets have a valid Vendor Maintenance at all times during the Term of the Contract with a Vendor recommended by the Supplier.
- 1.4 The Supplier will only provide the Managed Services to the named contacts nominated by the Customer. It is Customer's responsibility to ensure that these contacts are up to date at all times.
- 1.5 Except for hardware maintenance services stated within the SDD, the Managed Services are provided by the Supplier remotely and if the Customer requires Supplier's support at Customer's premises or any other location, an Additional Service Charge shall apply.
- 1.6 The Supplier does not warrant that it will remedy all Service Failures however, it shall use all commercially reasonable endeavours to provide a work-around solution where possible.
- 1.7 The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).
- 1.8 In the event the Customer is using the Supplier's shared infrastructure, the Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared infrastructure. This includes:
 - 1.8.1 launching a denial-of-service attack;
 - 1.8.2 circumvening the user authentication or security process of a host or network;
 - 1.8.3 creating, transmitting, storing or publishing any virus, trojan, corrupting programme or corrupted data;
 - 1.8.4 collecting, streaming, distributing or accessing any material that it knows, or reasonably should know, cannot be legally collected, streamed, distributed or accessed; and/or
 - 1.8.5 causing an excessive use (based on similar solutions of equitable size and configuration) such as but not limited to; high central processing Unit (CPU) utilisation high memory use and excessive disk throughput. The Supplier will flag to the Customer where excessive use has been identified to be effecting other customers or the general health of the shared platform.
- 1.9 The Customer shall not store, distribute or transmit through the Managed Services any material that:

- 1.9.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
 - 1.9.2 facilitates illegal activity;
 - 1.9.3 depicts sexually explicit images;
 - 1.9.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity;
 - 1.9.5 is known or likely to cause, interrupt, damage, destroy or limit the functionality of any computer software, hardware or telecommunications equipment (including, without limit, files that contain viruses, corrupted files, or any other similar software or programmes);
 - 1.9.6 that invades another's privacy, causes annoyance, inconvenience or needless anxiety to any person;
 - 1.9.7 that is in breach of any other third party's rights, including downloading, installation or distribution of pirated software or other inappropriately licensed software, deletion of any author attributions, legal notices or proprietary designations or labels in any file that is uploaded, falsification of the origin or source of any software or other material.
- 1.10 In the event the Customer is in breach of clauses 1.8 or 1.9 of this Schedule 4, the Supplier reserves the right to suspend the Managed Services immediately until the Customer has remedied the breach. If the breach is so serious as to potentially harm the Supplier's reputation, it shall be entitled to terminate the Contract with immediate effect and with no liability to the Customer.
- 1.11 For the avoidance of doubt, notwithstanding the suspension of the Services, the Customer shall remain responsible and liable to pay the Supplier for the Charges during the period of suspension.
- 1.12 The Managed Service shall continue for the Initial Term and thereafter shall continue for a period of twelve months (automatically renewing for a further twelve months on each anniversary after the Initial Term) unless and until either Party serves written notice on the other Party to terminate the Managed Service.
- 1.13 A notice to terminate the Managed Service shall only be effective if the Customer provides a minimum of 90 (ninety) days' notice expiring before the expiry of the Initial Term or any anniversary following the Initial Term and has fully paid any sums owing to the Supplier and discharged all obligations under the Contract. Such termination notice shall be sent to contractcancellations@ansgroup.co.uk and followed by a hard copy to Supplier's registered address.

2. HARDWARE MAINTENANCE REPLACEMENT PARTS

- 2.1 Any replacement parts applied to the Goods will become the property of the owner of such Goods and all faulty parts will become the property of the Supplier
- 2.2 The Supplier reserves the right to supply new, second hand or reconditioned replacement parts in the performance of the Services.

3. SERVICE LEVELS

- 3.1 If there is a Service Failure, the Supplier shall conduct an Impact Assessment and assess the Priority. The Supplier shall use its reasonable endeavours to respond to the Service Failure within the SLA Response times specified in the SDD.
- 3.2 Subject to the Managed Service purchased by the Customer, if there is a Service Failure, the Supplier shall at its sole discretion take such further remedial action as is reasonable to rectify and prevent the Service Failure from taking place or recurring save in the event that there is Customer Cause. The Customer shall co-operate with the Supplier in the event of a Service Failure.
- 3.3 For the avoidance of doubt, any and all Service Levels are void on any Supported Asset that doesn't have a valid vendor warranty/maintenance with the Supplier recommended Vendor. It is Customer's responsibility to ensure that all Supported Assets are covered by a vendor maintenance at all times during the duration of the Contract.

4. SERVICE CREDITS

- 4.1 In the event of a Service Level Failure and subject to the applicable SDD a Service Credit may apply, which shall be accounted for to the Customer only in accordance with clause 4.3 of this Schedule 4 and shall always be subject to clause 4.4 of this Schedule 4.
- 4.2 Service Credits prescribed in respect of any Service Level Failure pursuant to this clause 4 (if any) shall be the Customer's sole and exclusive financial remedy for a Service Level Failure.
- 4.3 The Customer may claim a Service Credit by giving written notice to the Supplier by the end of the calendar month following the month in which the relevant Service Level Failure occurred. Upon receiving such notice, the Supplier shall either:
 - 4.3.1 specify the Service Credit sum as a credit against the next invoice which is issued by the Supplier to the Customer under the Contract; or
 - 4.3.2 in the event that the Supplier has not or cannot comply with clause 4.3.1, the Supplier shall pay the Customer the Service Credit sum upon demand.
- 4.4 Service Credits are not cumulative (one Service Credit payable per one Service Level Failure regardless of the amount of Service Levels caused as a result Service Level Failure) and shall not exceed 10% of the monthly Base Charge.
- 4.5 The Supplier shall not be liable to account to the Customer for those Service Credits which arise during, a period of time when the Customer is late in making a payment by the date due for payment (and for the avoidance of doubt the Customer shall not be late in making payment for these purposes for the duration that the relevant amounts are the subject to a bona fide dispute).
- 4.6 The Supplier shall not be liable to account to the Customer for Service Credits arising during or related to Scheduled Maintenance, Emergency Maintenance or as a result of power or environmental failure on Customer's premises.
- 4.7 The Customer acknowledges and agrees that the Service Credits do not operate by way of penalty and constitute a genuine attempt to pre-estimate Customer's loss.

44. Schedule 5 - WAN/LAN

1. WAN/LAN SERVICES (ADDITIONAL PROVISIONS)

- 1.1 The WAN/LAN Services shall be provided by the Supplier to the Customer in accordance with the Contract and shall consist of:
 - 1.1.1 The provision and installation of wide/local area network bandwidth and the provision and installation of relevant hardware;
 - 1.1.2 The provision of on site and remote engineering resources (including the management of third parties) to deal with wide/local area network and hardware faults as set out in the Contract.
 - 1.1.3 The ongoing support and management of the wide/local area network bandwidth and the relevant hardware as set out in the Contract.
- 1.2 If there is a failure or deficiency in the supply of the WAN/LAN Services, the Customer shall where it is reasonably possible to do so provide the supplier with a reasonable opportunity to correct such failure and deficiency.
- 1.3 The dates given by the Supplier for installation of new circuits are estimated dates only. The Supplier shall not be responsible for cancellation of Customer's existing circuits with Customer's current providers.
- 1.4 In the event the Customer is unreasonably delaying the installation of circuits, the Supplier reserves the right to start charging the Customer ninety (90) days after the receipt of a signed Quotation.

45. Schedule 6 - Public Cloud Resource Subscription Services

1. PUBLIC CLOUD RESOURCE SUBSCRIPTIONS

- 1.1 The cloud resource Charges quoted by the Supplier are estimated only. The actual Charges will depend on cloud provider's then current pricing (which may vary month by month) and Customer's usage.
- 1.2 The Subscriptions shall be automatically suspended should the Supplier not receive payment on or before the due date stated on the invoice.
- 1.3 Subscription cancellations must be sent to contractcancellations@ansgroup.co.uk. Cancellation charges may apply.
- 1.4 Customer Data stored on public cloud platforms will be retained for ninety (90) days period following suspension/cancellation following which it will be permanently deleted. It is Customer's responsibility to ensure it take regular back-ups of the Data. The Customer may be charged during this period.
- 1.5 The applicable third-party cloud agreement ("Cloud Agreement") as referenced below shall be incorporated into and form part of the Contract. In the event of any conflict between these Conditions and the Cloud Agreement, the Cloud Agreement shall take precedence.

Microsoft Azure - <https://msdn.microsoft.com/en-us/partner-center/agreements>

AWS - <https://s3.amazonaws.com/Reseller-Program-Legal-Documents/AWS+Reseller+Customer+License+Terms.pdf>

46. Schedule 7 - Software Development

1. SOFTWARE AND RELEASE PLAN

- 1.1 The Supplier shall carry out the Services with reasonable diligence and despatch, and with reasonable skill and expertise, to provide the Supplier Software in accordance with the Release Requirements.
- 1.2 The Supplier shall provide the Third-Party Software and any Modified Software (Third Party) to the Customer [and its Affiliates] under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence terms [and to use reasonable endeavours to ensure that its Affiliates are bound under similar obligations owed to the relevant third parties].
- 1.3 The Supplier shall provide the Supplier Standard Software, the Bespoke Software and any Modified Software (Supplier) pursuant to this Schedule 7 and the Release Plan.

2. SERVICES

- 2.1 The Supplier shall develop the Bespoke Software and make the modifications to the Modified Software in accordance with the Release Requirements.
- 2.2 The Supplier agrees:
 - 2.2.1 to deliver or deploy the Supplier Software in the manner described in the Release Plan;
 - 2.2.2 to carry out, in conjunction with the Customer, the Acceptance Tests; and
 - 2.2.3 to provide the Supplier Software Ready for Deployment on the terms and conditions set out in this Schedule 7.
- 2.3 In performing the Services, the Supplier shall comply with the Customer's reasonable instructions to ensure minimal disruption to the Customer's business.

3. TESTING

- 3.1 After completion of each item in the Release Requirements, the Supplier shall carry out reasonable tests in accordance with the acceptance criteria mutually agreed in the Release Plan.

4. SOFTWARE DELIVERY, DEPLOYMENT AND DELAYS

- 4.1 The Supplier shall deliver or deploy each Software Module in the manner specified in the Release Plan.
- 4.2 The Supplier shall supply to the Customer such information and assistance as may be necessary to enable the Customer to prepare for delivery or deployment of the relevant Software Modules.
- 4.3 The Customer shall supply to the Supplier any information required, including, but not limited to: access credentials, IP addresses and URLs necessary to facilitate deployment or delivery of the relevant Software Modules.
- 4.4 If any delivery is delayed at the request of the customer, or because of his acts or omissions, the Release Plan shall be amended to take account of such delay. If the Supplier can demonstrate that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under the Contract, the Supplier may, at its sole discretion, notify the Customer that it wishes to increase the

Price by an amount not exceeding any such demonstrable cost. The Supplier may invoice the Customer for any additional monies that become payable in this way, within [30] days of demonstrating the increase in costs.

5. USER ACCEPTANCE TESTS

- 5.1 The Supplier shall provide the Customer a continued access to a staging site throughout the project in order to carry out User Acceptance Tests. Such access will be available to the Customer for up until 15 (fifteen) days after the Supplier notifies the Customer of the Software Ready for Testing.
- 5.2 If, at any point after the Software Module fails, in some material respect, to pass the Pre-Installation Tests within [four weeks] from the date of its second submission to the Pre-Installation Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion to specify (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Software Module. If the Software Module fails such further tests, then the Customer may:
- 5.2.1 request a repeat test in accordance this clause above 5.2;
 - 5.2.2 permit installation of the Software Module subject to such change of acceptance criteria, amendment of the Backlog and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or
 - 5.2.3 if the Supplier is unable to correct material defects within a period of [six] months from the start of Pre-Installation Tests, reject the Software Module as not being in conformity with this Schedule, and terminate the Contract.

6. ACCEPTANCE

- 6.1 Acceptance of the Supplier Software shall be deemed to have occurred on whichever is the earliest of:
- 6.1.1 the signing by the Customer of a Release Acceptance Certificate;
 - 6.1.2 the expiry of [fifteen days] after the completion of all the Acceptance Tests, unless the Customer has given any written notice.
 - 6.1.3 the use of the Supplier Software by the Customer [or any of its Affiliates] in the normal course of the Business.

7. RELEASE PLAN ANS VARIATIONS

- 7.1 Both parties shall perform their obligations under this Schedule 7 in accordance with the Release Plan.
- 7.2 Any variation to the Release Requirements may only be requested by the Customer pursuant to the change control procedures set out herein this Schedule 7;

8. SUPPLIER'S OBLIGATIONS

- 8.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Release Plan and with reasonable skill and care.

- 8.2 The undertaking at clause 8.1 above shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.

9. CUSTOMER'S OBLIGATIONS

- 9.1 The Customer shall:
- 9.1.1 ensure that the Authorised Users use the Services and the Release Plan in accordance with these Conditions and shall be responsible for any Authorised User's breach of these Conditions and/or the Contract;
 - 9.1.2 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;
 - 9.1.3 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
 - 9.1.4 No later than [five days] after the Commencement Date, the Customer shall notify the Supplier of the name and qualifications of the person appointed as the Customer Representative.
- 9.2 The Supplier's Representative shall co-operate with the Customer Representative and shall attend meetings scheduled by the Customer Representative at reasonable intervals not less than once a week to advise and assist the Customer on all matters relating to the Services.

10. PROPRIETARY RIGHTS

- 10.1 Except as expressly stated in this Schedule 7, the ownership of the Intellectual Property Rights of each of the Parties as at the date of commencement of the Services shall not be affected by this Schedule 7.
- 10.2 The Intellectual Property Rights in the Supplier Software (other than the Open-Source Software) are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence to use such Supplier Software to any other party or parties.
- 10.3 The Intellectual Property Rights in the Bespoke Software, and the Modified Software (Supplier) shall, at the Commencement Date or (if later) on creation of the rights, vest in the Customer. The Supplier assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to the Customer.
- 10.4 The Supplier shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that the Customer may consider necessary or desirable to perfect the right, title and interest of the Customer in and to the Intellectual Property Rights in the Bespoke Software and the Modified Software (Supplier).
- 10.5 The Supplier shall:
- 10.5.1 procure the irrevocable waiver of all moral rights in the Release Plan relating to the Bespoke Software, and the Modified Software (Supplier), to the extent permitted by law;

- 10.5.2 ensure that records are maintained which are sufficient to provide evidence of the process of independent creation of the Bespoke Software and the Modified Software (Supplier).
- 10.6 The Customer grants the Supplier an unlimited, paid up, non-exclusive licence, inclusive of sub-licensing rights, to use the Bespoke Software and the Modified Software, to carry out its obligations under clause 3 of this Schedule.
- 10.7 The Customer shall use reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Licensed Software and shall promptly report to the Supplier any such infringement that comes to its attention. In particular, the Customer shall:
 - 10.7.1 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Licensed Software; and
 - 10.7.2 not permit third parties to have access to the Licensed Software without the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given access to the Licensed Software.
- 10.8 The Supplier confirms that it has all the rights in relation to the Services and the Release Plan that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.
- 10.9 Both parties acknowledge and agree that each party shall retain ownership of, and shall have the unrestricted right to use, any general knowledge, skills, and experience, and any ideas, concepts, know-how, techniques, designs, generalized frameworks, models, and artifacts ("Residual Rights"), which such party obtains in the course of fulfilling its obligations under the Contract.

11. SOFTWARE LICENCE

- 11.1 The Supplier grants, subject to these Conditions, the Customer the non-exclusive right to use the Licensed Software and the Release Plan for the following purposes:
 - 11.1.1 any activity in the course of the business;
 - 11.1.2 the provision of hardware or software facilities management, support, maintenance, development, disaster recovery, back-up, information processing, network or other services relating to the Supplied Software;
 - 11.1.3 the use and storage of data within any database comprised in the Licensed Software and the extraction and re-utilisation of data therefrom, and the amendment or merging of the data or database; and
 - 11.1.4 use in connection with any associated or interconnected networks, including the internet or intranet,

(together, Licensed Purposes).

12. TRANSFER OR REPRODUCTION OF LICENSED SOFTWARE

- 12.1 The Customer may make such copies of the Licensed Software as are reasonably necessary for use in accordance with these Conditions and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Licensed Software.
- 12.2 The Supplier shall at all times own all copies of all or any part of the Licensed Software. For copies recorded on a tangible medium, the Customer shall place on each copy of all or any part of the

Licensed Software a clearly visible label indicating that the copy is the property of the Supplier, and reproducing the Supplier's proprietary rights notice. For electronic copies, the Customer shall ensure that all proprietary notices contained in the Licensed Software shall be maintained in such copies and shall display when the software is run, in the same way as in the case of the Licensed Software as supplied by the Supplier. The Customer shall keep all copies of the Licensed Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.

12.3 The Customer shall not:

12.3.1 sub-license, rent, lend, assign or transfer in any other way the Contract or the Licensed Software to any person without the prior written consent of the Supplier; and

12.3.2 give access to the Licensed Software through any network of computers to users who are not employees or agents of the Customer.

13. USE AND ADAPTATION OF LICENSED SOFTWARE

13.1 The Customer may use the Licensed Software with other software.

13.2 The Customer may not make adaptations or variations of the Licensed Software without the prior consent of the Supplier.

13.3 The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software, except as permitted by law.

14. SOURCE CODE AND ESCROW

14.1 Immediately after the Acceptance Date, the Supplier shall deliver to the Customer the updated and annotated version of the Bespoke Software in Source Code and machine-readable form.

14.2 Immediately after the Commencement Date, the Supplier shall:

14.2.1 enter into a three-party source code escrow agreement in the agreed form (incorporating such amendments as NCC Escrow International Limited (NCC) may reasonably request) with the Customer and NCC in respect of the Supplier Standard Software; and

14.2.2 ensure that the third-party owner(s) listed in the Release Plan (if any) and the Escrow Agent enter into a three-party source code escrow agreement(s) in the agreed form (incorporating such amendments as NCC may reasonably request) with the Customer and NCC in respect of the Third-Party Software and the Modified Software (Third Party).

14.3 The Supplier and the Customer mutually undertake to sign the Escrow Agreement (1) promptly following the Effective Date. The Supplier additionally undertakes to procure that the Escrow Agent promptly signs the Escrow Agreement (1).

14.4 The Customer undertakes to sign the Escrow Agreement(s) (2) promptly following the Effective Date.

14.5 The Supplier and the Customer mutually undertake to abide by the terms of the Escrow Agreement (1) and acknowledge that for the purposes of the Escrow Agreement (1):

14.5.1 the Source Code in respect of the Supplier Standard Software will constitute the "Material";

- 14.5.2 the Licence, insofar that it relates to the Supplier Standard Software, will constitute the "Licence Agreement"; and
- 14.5.3 the Supplier Standard Software will constitute the "Package".
- 14.6 The Supplier and the Customer acknowledge that for the purposes of the Escrow Agreement(s) (2):
 - 14.6.1 the Source Code of the Third-Party Software and the Modified Software (Third Party) will constitute the Material;
 - 14.6.2 the Contract, insofar that it relates to the Third-Party Software and the Modified Software (Third Party) will constitute the Licence Agreement; and
 - 14.6.3 the Third-Party Software and the Modified Software (Third Party) will constitute the Package.
- 14.7 All relevant escrow fees in respect of the Escrow Agreement (1) shall be payable by the Supplier and the Customer in the proportions set out in the NCC's Multi-Licensee Software Escrow Agreement.
- 14.8 All relevant escrow fees in respect of the Escrow Agreement(s) (2) shall be payable by the (relevant) Third Party or the Supplier on its behalf and the Customer in the proportions set out in the NCC's Multi-Licensee Software Escrow Agreement.

15. INDEMNITY

- 15.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Release Plan, provided that:
 - 15.1.1 the Customer is given prompt notice of any such claim;
 - 15.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 15.1.3 the Customer is given sole authority to defend or settle the claim.
- 15.2 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including court costs and reasonable legal fees) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Supplier Software, any New Release, New Version or the Release Plan, or receipt of the benefit of the Services, provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (Claim), the Customer:
 - 15.2.1 as soon as reasonably practicable, gives written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 15.2.2 does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

- 15.2.3 gives the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 15.2.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 15.3 Without prejudice to clause 15.2, the Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:
- 15.3.1 caused or contributed to by the Customer's use of the Supplier Software or any New Release (as the case may be) in combination with software not supplied or approved in writing by the Supplier (other than the operating system of any Computer Hardware, provided that the Supplier was notified in writing of the identity of this operating system before this agreement was entered into);
 - 15.3.2 based on use of any version of the Supplier Software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version; or
 - 15.3.3 where the claim for infringement arises in respect of a feature of the Supplier Software which was specified by the Customer in the Business Requirements Specification.

16. WARRANTY

- 16.1 The Supplier warrants and represents that:
- 16.1.1 the Bespoke Software, Supplier Standard Software and Documentation are proprietary to the Supplier (except where otherwise stated in the Release Plan) and that it has the right to license all UK Intellectual Property Rights in and to the Bespoke Software, Supplier Standard Software and Documentation to the Customer, and to provide the Support Services to the Customer;
 - 16.1.2 none of the New Releases, New Versions and Documentation supplied by the Supplier under the Contract infringes the UK Intellectual Property Rights of any third party;
 - 16.1.3 the Supplier Software at the Acceptance Date, and for thirty (30) days after that date, will perform in accordance with the Technical Specification;
- 16.2 The sole remedy for breach of the warranty under clause 16.1.3 shall be correction of Defects by the Supplier within a reasonable time from notification by the Customer of the Defect that constitutes such breach.
- 16.3 The warranties set out in clause 16.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to the Contract. Without limitation, the Supplier specifically denies any implied or express representation that the Supplier Software will be fit:
- 16.3.1 to operate in conjunction with any hardware items or software products other than with those that are identified in the Documentation as being compatible with the Supplier Software; or
 - 16.3.2 to operate uninterrupted or error-free.

- 16.4 The Supplier does not warrant or guarantee that it will be able to rectify all Defects, nor that any Defect which does not materially affect the Customer's operations using the Supported Software will be corrected before the issue of the next New Release.
- 16.5 Any unauthorised modifications, use or improper installation of the Supplier Software by, or on behalf of, the Customer shall render all the Supplier's warranties and obligations under the Contract null and void.
- 16.6 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Supplier.
- 16.7 The Customer acknowledges that the only warranties in relation to the Third-Party Software and the Modified Software (Third Party), or the supply thereof, are those contained in the licence from the third-party supplier(s) of the same, and that to the extent that any of such warranties are given to the Supplier, it will pass on the benefit of such warranties to the Customer.
- 16.8 [Any Open-Source Software provided by the Supplier may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 16.1
- 16.9 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform the Contract and that those signing the Contract are duly authorised to bind the party for whom they sign.

47. Schedule 8 - Data Protection

DATA PROTECTION

Operative provisions

Definitions as used herein:

"Data Protection Legislation" means European Directives 95/46 and 2002/58/EC and any legislation and/or regulation implementing or made pursuant to them, or which amends, replaces, re-enacts or consolidates any of them (including the General Data Protection Regulation), and all other applicable laws relating to processing of personal data and privacy that may exist in any relevant jurisdiction, including, where applicable, the guidance and codes of practice issued by supervisory authorities;

"General Data Protection Regulation" means the General Data Protection Regulation (EU) 2016/679; and

"data controller", **"data processor"**, **"data subject"**, **"personal data"**, **"processing"** and **"appropriate technical and organisational measures"** shall be interpreted in accordance with Directive 95/46/EC or other applicable Data Protection Legislation in the relevant jurisdiction.

1. DATA PROTECTION

- 1.1 The parties agree the provisions of this paragraph 1 shall apply to the personal data the Supplier processes in the course of providing the Services. The parties agree that the Customer is the data controller and the Supplier is the data processor in relation to the personal data that the Supplier processes in the course of providing the Services.
- 1.2 The subject-matter of the data processing is the performance of the Services and the processing will be carried out until the date that the Supplier ceases to provide the Services to the Customer. The obligations and rights of the Customer are as set out in the Contract. Schedule 8 of the Conditions sets out the nature and purpose of the processing, the types of personal data the Supplier processes and the categories of data subjects whose personal data is processed.
- 1.3 When the Supplier processes personal data in the course of providing the Services, the Supplier shall, notwithstanding anything to the contrary in the Conditions and at no additional cost to the Customer:
 - 1.3.1 process the personal data only in accordance with written instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in the Conditions or as otherwise notified by the Customer to the Supplier from time to time) and not for the Supplier's own purposes. If the Supplier is required to process the personal data for any other purpose by European Union or Member State law to which the Supplier is subject, the Supplier shall inform the Customer of this requirement before the processing, unless that law prohibits this on important grounds of public interest;

- 1.3.2 notify the Customer immediately if, in the Supplier's opinion, an instruction for the processing of personal data given by the Customer infringes applicable Data Protection Legislation;
- 1.3.3 taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures and in so far as it is possible, in fulfilling the Customer's obligations to respond to requests from data subjects exercising their rights; and
- 1.3.4 taking into account the nature of the processing and the information available to the Supplier, assist the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the General Data Protection Regulation;
- 1.3.5 implement and maintain appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, damage or theft of the personal data and having regard to the nature of the personal data which is to be protected. As a minimum, these should include the requirements required under applicable Data Protection Legislation and the requirements set out in Appendix 1 to this Annex. The Supplier shall provide a written description of the technical and organisational methods the Supplier employs for processing personal data, within the timescales required by the Customer;
- 1.3.6 not give access to or transfer any personal data to any third party (including any affiliates, group companies or sub-contractors) without the prior written consent of the Customer. Where the Customer does consent to the Supplier engaging a sub-contractor to carry out any part of the Services, the Supplier must ensure the reliability and competence of the third party, its employees and agents who may have access to the personal data and must include in any contract with the third party provisions in favour of the Customer which are the same as those in this paragraph 1 and as are required by applicable Data Protection Legislation. Where prior written consent given by the Customer pursuant to this paragraph 1.3.6 authorises a class of third party to process personal data, the Supplier shall inform the Customer of any intended changes concerning the addition or replacement of any sub-contractors within such class, and the Customer shall have the right to object to, and prevent, any such addition or replacement of subcontractors within such class. For the avoidance of doubt, where a third party fails to fulfil its obligations under any sub-processing agreement or any applicable Data Protection Legislation, the Supplier will remain fully liable to the Customer for the fulfilment of the Supplier's obligations under the Conditions;
- 1.3.7 take reasonable steps to ensure the reliability and competence of the Supplier's personnel who have access to the personal data;
- 1.3.8 ensure that personnel required to access the personal data have committed to keep personal data confidential and comply with the obligations set out in this paragraph 1 or are under an appropriate statutory obligation of confidentiality;

- 1.3.9 at the end of the Services upon the Customer's request, securely destroy or return personal data to the Customer and delete existing copies (unless European Union or Member State law requires storage of the personal data);
- 1.3.10 maintain written records of all categories of personal data processing activities carried out on behalf of the Customer, including any information prescribed in applicable Data Protection Legislation;
- 1.3.11 allow the Customer and its respective auditors or authorised agents to conduct audits or inspections during the term of the Agreement and for 12 months thereafter, which will include providing access to the premises, resources, personnel the Supplier or the Supplier's sub-contractors use in connection with the provision of the Services and information maintained in accordance with paragraph 1.3.10, and provide all reasonable assistance in order to assist the Customer in exercising its audit rights under this paragraph 1.3.11. The purposes of an audit pursuant to this paragraph 1.3.11 include verifying that the Supplier and its subcontractors are processing personal data in accordance with the obligations under the Conditions and applicable Data Protection Legislation.
- 1.3.12 If the Supplier becomes aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to the personal data that the Supplier processes in the course of providing the Services (a "Security Incident"), the Supplier shall notify the Customer without undue delay and:
- 1.3.13 provide the Customer (as soon as possible) with a detailed description of the Security Incident, the type of data that was the subject of the Security Incident and the identity of each affected person, as soon as such information can be collected or otherwise becomes available (as well as periodic updates to this information and any other information the Customer may reasonably request relating to the Security Incident);
- 1.3.14 take action immediately, at the Supplier's own expense, to investigate the Security Incident and to identify, prevent and mitigate the effects of the Security Incident and, with the prior written approval of the Customer, to carry out any recovery or other action necessary to remedy the Security Incident; and
- 1.3.15 not release or publish any filing, communication, notice, press release, or report concerning the Security Incident without the Customer's prior written approval (except where required to do so by law).
- 1.4 The Supplier shall not process personal data outside the European Economic Area or a country in respect of a valid adequacy decision has been issued by the European Commission, except with the prior written consent of the Customer.
- 1.5 If the European Commission lays down, or an applicable supervisory authority adopts, standard contractual clauses for the matters referred to in Article 28(3) and Article 28(4) of the General Data Protection Regulation pursuant to Article 28(7) or Article 28(8) of the General Data Protection Regulation (as appropriate) and the Customer notifies the Supplier that it wishes to incorporate any element of any such standard contractual clauses into the Conditions, the Supplier shall agree to the changes as reasonably required by the Customer in order to achieve this.

- 1.6 The Supplier will indemnify and hold the Customer harmless against all losses, claims, costs, damages or proceedings suffered or incurred by the Customer arising out of or in connection with the Supplier's breach of this paragraph 1.

Appendix 1

Security Measures

1. ACCESS CONTROL TO PREMISES AND FACILITIES

Measures must be taken to prevent unauthorized physical access to premises and facilities holding personal data. Measures shall include:

- Access control system
- ID reader, magnetic card, chip card
- (Issue of) keys
- Door locking (electric door openers etc.)
- Surveillance facilities
- Alarm system, video/CCTV monitor
- Logging of facility exits/entries

2. ACCESS CONTROL TO SYSTEMS

Measures must be taken to prevent unauthorized access to IT systems. These must include the following technical and organizational measures for user identification and authentication:

- Password procedures (incl. special characters, minimum length, forced change of password)
- No access for guest users or anonymous accounts
- Central management of system access
- Access to IT systems subject to approval from HR management and IT system administrators

3. ACCESS CONTROL TO DATA

Measures must be taken to prevent authorized users from accessing data beyond their authorized access rights and prevent the unauthorised [input, reading, copying, removal] modification or disclosure of data. These measures shall include:

- Differentiated access rights
- Access rights defined according to duties
- Automated log of user access via IT systems

- Measures to prevent the use of automated data-processing systems by unauthorised persons using data communication equipment

4. DISCLOSURE CONTROL

Measures must be taken to prevent the unauthorized access, alteration or removal of data during transfer, and to ensure that all transfers are secure and are logged. These measures shall include:

- Compulsory use of a wholly-owned private network for all data transfers
- Encryption using a VPN for remote access, transport and communication of data.
- Creating an audit trail of all data transfers

5. INPUT CONTROL

Measures must be put in place to ensure all data management and maintenance is logged, and an audit trail of whether data have been entered, changed or removed (deleted) and by whom must be maintained.

Measures should include:

- Logging user activities on IT systems
- Ensure that it is possible to verify and establish to which bodies personal data have been or may be transmitted or made available using data communication equipment
- Ensure that it is possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input;

6. JOB CONTROL

Measures should be put in place to ensure that data is processed strictly in compliance with the data importer's instructions. These measures must include:

- Unambiguous wording of contractual instructions
- Monitoring of contract performance

7. AVAILABILITY CONTROL

Measures should be put in place to ensure that data are protected against accidental destruction or loss.

These measures must include:

- Ensuring that installed systems may, in the case of interruption, be restored
- Ensure systems are functioning, and that faults are reported

- Ensure stored personal data cannot be corrupted by means of a malfunctioning of the system
- Uninterruptible power supply (UPS)
- Business Continuity procedures
- Remote storage
- Anti-virus/firewall systems

8. SEGREGATION CONTROL

Measures should be put in place to allow data collected for different purposes to be processed separately.

These should include:

- Restriction of access to data stored for different purposes according to staff duties.
- Segregation of business IT systems
- Segregation of IT testing and production environments

Part A

Data processing and security details

[GUIDANCE NOTE TO BUYERS: THE FOLLOWING SCHEDULE IS JUST AN EXAMPLE. YOU MUST CONSIDER HOW DATA PROTECTION LEGISLATION APPLIES TO YOUR SPECIFIC SERVICE AND SUPPLIER AND MUST INCLUDE ANY FURTHER DATA DETAILS IN THIS SCHEDULE WHICH MAY BE REQUIRED TO ENSURE COMPLIANCE WITH THOSE LAWS. FOR EXAMPLE, WHERE THERE MAY BE JOINT CONTROLLERS, DATA SHARING PROVISIONS, ETC. YOU SHOULD ALSO REVIEW THE SUPPLIER'S DATA PROTECTION LEGISLATION TERMS AND CONDITIONS WHICH MAY BE SUFFICIENT IN THEIR OWN RIGHT]

Categories of data subject

[Categories of personal data in respect of the corresponding data subject

For example past, present and prospective <CUSTOMER> employees, contractors & agency staff; UK and Other as applicable

For example personal details (PII) such as name, job title, work address, work email, work telephone numbers etc. held by <Supplier> for basic service and contract management activities]

Subject matter of the processing:

[This should be a high level, short description of what the Processing is about ie its subject matter]

Duration of the processing:

[Clearly set out the duration of the Processing including dates]

Nature and purposes of the Processing:

[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc) The purpose might include eg: employment Processing, statutory obligation, recruitment assessment etc]

Type of Personal Data:

[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]

Categories of Data Subject:

[Examples include: Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]

Plan for return or destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data:

[Describe how long the data will be retained for and how it will be returned or destroyed]