

GENERAL TERMS AND CONDITIONS

BETWEEN:

- (1) **the customer**, a company registered in England as stated in the Order (the “**Company**”); and
- (2) **BCN Group Limited** or as stated in the Order (the “**Supplier**”).

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation shall apply in this Agreement:

Acceptance Criteria has the meaning set out in Clause 12.1;

Acceptance Period has the meaning set out in Clause 12.2a);

Acceptance Test/Testing means the acceptance tests (if any) set out in the Order to test that the Deliverables operate in accordance with the requirements of the Application Specification, agreed configuration, Services description or any other requirement as specified in the relevant Order;

Agreement means the contract between the Supplier and the Company which consists of these general terms and conditions, the relevant Service Schedule, the relevant Order, the Service Operating Manual and any other documents expressly incorporated by reference;

Agreement Year means the period of 12 months from the Effective Date and each period of 12 months thereafter;

Application Specification means the specification of the Supplier Application as set out in the Order;

Authorised Users means those employees, agents and independent contractors of the Company who are authorised by the Company to use the Supplier Application and Documentation and other Services;

Auditor means any of the following who is exercising a party's rights under Clause 11: (a) the Company or the Supplier (as applicable); (b) a Regulatory Authority which has responsibility for the regulation or governance of any of the activities of the Company or any other Group Company or the Supplier or any other member of the Supplier Group; and (c) the agents and Representatives of the Company or the Supplier or such Regulatory Authority;

Business Critical Service Failure means a failure as defined in the relevant service schedule and this Agreement;

Business Day means any day other than a Saturday, Sunday or a day that is a public or bank holiday in England;

Charges means the charges for the Services included within the Order, excluding any Expenses incurred by the Supplier;

Commissioner means: the Information Commissioner (see Article 4(A3), UK GDPR and section 114, DPA 2018).

Company Data means all data relating to the Group Company or the customers of any of them which is processed, stored, generated, or capable of access by, or which otherwise comes into the possession of the Supplier, any Subcontractor or any Supplier Personnel including Company Personal Data;

Company Dependency means the obligations of the Company on which the Supplier is dependent to be able to fulfil its obligations under this Agreement as set out in Clause 7 and including the Company Dependencies specifically detailed in any Order and/or Service Schedule;

Company Material means all materials, equipment and tools, drawings, specifications and Company Data supplied by the Company to the Supplier;

Confidential Information means all information of a confidential or proprietary nature relating to the business, prospects or activities of the party in question which is given to, generated by, or otherwise comes into the possession of the other party in the course of the negotiation or performance of this Agreement or any Order;

Customer Agreement means: the Microsoft customer agreement, which is a direct agreement between the Company and Microsoft and is a condition of Cloud Solution Provider Program that the Company enters into this agreement, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time (any such updates shall continue to form part of the Customer Agreement);

Data Protection Laws means the EU General Data Protection Regulation (EU) 2016/679 as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (“**UK GDPR**”) the Data Protection Act 2018 and all other laws relating to data protection and privacy to the extent applicable to the Services;

Data Subject, Controller, Personal Data, Personal Data Breach, Process, Processing and Processor have the meanings given to the in the Data Protection Laws.

Default means a breach of any term of this Agreement or any tortious act or statement, breach of statutory duty, or misrepresentation that gives rise to liability under any Laws;

Deliverable means a document, plan, program or other product which is included in the Services or the Supplier is obliged to provide to the Company in the course of providing Services and/or the Supplier Application including the Developed Software and includes all drafts and working papers created for the purpose of producing the same;

Developed Software means any bespoke software to be developed specifically for the Company pursuant to any Order;

Dispute means any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services;

Dispute Notice has the meaning given to it at Clause 10.1.

Documentation means the operating manuals, user instruction manuals, technical literature, specifications and other documentation relating to the Supplier Application;

Employment Costs means all costs associated with employment (including worker status) including all wages, taxes, national insurance, pension contributions, benefits, holiday and other paid leave entitlements, incentives and other costs related to the same;

Effective Date means the date on which the Order is signed by the Company;

Equipment means all network, dedicated server, hardware, devices, managed router, firewall devices, software managed devices, loader balances, VPN or any other equipment provided as part of the Services as set out in the applicable Order;

Expiry Date means the date this Agreement expires in accordance with Clause 3.2;

Expenses means any travel and accommodation costs incurred by the Supplier in delivering any non-recurring Services where the delivery location is more than 25 miles from the Suppliers service location;

Force Majeure Event means circumstances beyond the Supplier's reasonable control including any act of God; governmental actions; war or national emergency; acts of threat of terrorism; protests; riot; civil commotion; fire; explosion; flood; epidemic or pandemic; lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce); restraints or delays affecting carriers; inability or delay in obtaining supplies of adequate or suitable materials; inability to access premises; breakdown or failure of technology or machinery; changes in Law which result in the provision of Services as set out in this Agreement being or becoming illegal; theft or malicious damage to the Supplier's property (whether physical or intangible); and/or failure of a utility service or transport or telecommunications network;

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight that one would reasonably and ordinarily expect from a person skilled and experienced in the practice or activity in question;

Group Company includes the Company and each undertaking that is, at the time in question and from time to time, a parent undertaking, or subsidiary undertaking of a parent undertaking or the Company (the terms parent undertaking and subsidiary undertaking being interpreted in accordance with section 1162 of the Companies Act 2006);

Initial Term has the meaning set out in Clause 3.1;

Initial Term Start Date means the earlier date of the last service to be made live from the Order or 2 months after the first service from the Order is made live;

Insolvency Event means an event where: (a) a person is unable or admits its inability to pay its debts (within the meaning of sections 123, 267 or 268, as applicable, of Insolvency Act 1986); (b) a person suspends or threatens to suspend payment of its debts; (c) any steps are taken with a view to any compromise, composition or arrangement by or in relation to that party with its creditors or any of them, or its members or any of them in relation to its debts or for the purpose of eliminating, reducing, preventing or mitigating the effect of any financial difficulties of that party,

or such compromise, composition or arrangement is approved, agreed or sanctioned (save for the sole purpose of a solvent reconstruction or amalgamation); (d) any steps are taken with a view to the general re-scheduling or reconfiguration of all or any of the party's debts; (e) any steps are taken with a view to the obtaining of any moratorium; (f) any steps are taken with a view to the appointment of an administrator, administrative receiver, receiver or liquidator over any (or any part thereof) of its assets, undertaking or income or such an administrator, administrative receiver, receiver or liquidator is appointed; (g) any steps are taken towards a party's winding-up or bankruptcy as applicable (save, in the case of a company, a solvent liquidation for the sole purpose of effecting a reconstruction or amalgamation) or is subject to a petition issued by any court for its winding-up or bankruptcy (as applicable) that is not withdrawn upon the party's application; (h) being a company, is the subject of a notice to strike off the register at Companies House; (i) has any distraint, execution or other process levied or enforced on any of its property; or (j) any event or step analogous to the event or steps set out in (a) to (i) inclusive of this definition occurs in any jurisdiction;

Intellectual Property Rights means any and all intellectual property rights including patents, trademarks, design rights, copyright (including in the object code and source code, in drawings, plans, specifications, designs and computer software and including all ideas, concepts, themes, characters, stories and places contained in or forming part of any copyrightable work) rights in the databases, domain names, topography rights, know-how, look and feel, rights in confidential information and all similar rights (whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world) together with the right to apply for registration of and/or register such rights and any and all goodwill relating or attached thereto and all extensions and renewals thereof;

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

Laws means: (a) all laws (including the common law); (b) all regulations, policies and codes of conduct which are legally-binding; or (c) directions of a Regulatory Authority with which the Company and the other Group Companies are reasonably required to comply and which, in each case, are applicable to the business of the Company and the other Group Companies or to any activities of the parties undertaken pursuant or in relation to this Agreement;

Licence Agreement means: all licence agreements that may have to be entered into by the Supplier and/or the Company in respect of Related Service Provider Services or Supplier software used including but not limited to the Supplier EULA, and the Customer Agreement. Such Licence Agreement terms shall be set out or referred to in the relevant Order.

Losses means losses, liabilities, damages, wasted expenditure, costs and expenses (including legal fees on a solicitor/own client basis and all other costs related to the investigation, prosecution or defence of legal claims);

Managed Services means the recurring services, as further described in the applicable Order to be performed by the Supplier in accordance with this Agreement.

Milestone means any act, event or achievement which is specified to be a milestone in an Order or Project Plan;

Order means an order form which sets out the Charges for the Services which will be processed by the Company through the Supplier's online ordering system and the relevant Statement of Work as applicable;

Professional Services means project services, as may be further described in the applicable Order, to be performed by the Supplier in accordance with this Agreement.

Project Plan means any project plan which is set out in an Order or which is required to be prepared and agreed in accordance with an Order;

Regulatory Authority means all governmental, statutory or regulatory bodies and any other competent authorities in any jurisdiction having responsibility for the regulation or governance of any of the activities of the Company or the Supplier;

Related Service Provider means the Supplier's partners, affiliates and other third parties that provide the Related Service Provider Services.

Related Service Provider Services means: any services, equipment, code or software programs written or provided by a Related Service Provider which are used by the Company during the provision of the Services.

Relief Events means: the following events:

- a) any failure by the Company to comply with its obligations under this Agreement;
- b) any error or malfunction in the business systems or any other software, hardware or systems for which the Supplier is not responsible or any failure by the Company, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the Supplier is not responsible;
- c) any failure by the Company or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to the Supplier which is reasonably required by the Supplier for the proper performance of its obligations under this Agreement;
- d) incompetence, misuse or other error of a user of the Services or erroneous or incorrectly prepared Company Materials;
- e) accident, neglect, virus or malware attacks, network down-time, misuse, transportations or moving, excessive fluctuations in mains electrical supply;
- f) failure or down-time of any Related Service Provider Services;
- g) failure to access or use the Services in accordance with the terms of this Agreement, any documentation or the Supplier's instructions;
- h) any change, addition, variation or repair other than those carried out by the Supplier;

- i) use of the Services in combination with other systems, software or equipment of the Company (or any third party) not approved by the Supplier;
- j) any telecommunications network defect, delay or failure; or
- k) any of the causes or events set out in Clause 20.6.

Renewal Term has the meaning set out in Clause 3.1;

Renewal Term Start Date means the earlier date of the last Service being renewed to be made live from the Order or 2 months after the first Service being renewed from the Order is made live;

Representative means, in relation to a party, the person appointed to such position to manage the day to day relationship between the parties;

Senior Representative has the meaning set out at Clause 10.2a).

Service Level means each of the minimum performance standards set out in in an Order;

Service Live Date means the first date the Services have been delivered to the Company in accordance with the requirements of this Agreement and have become available for use by the Company;

Service Operating Manual means the reference document which describes the mode of operation and support for the Services, including service level agreements, processes and standards;

Service Schedule means the Service specific schedule applicable to each relevant Service;

Services means the services which the Supplier is to carry out for the Company under this Agreement as described in the Order or Service Schedule and/or an Order (including without limitation the provisions of Related Service Provider Services, Equipment, Managed Services, NCE Subscription Services and Professional Services and/or the Service Operating Manual which are included within, or required for the performance of the services and which shall be fully described in the Order;

Source Code means the source code of the Developed Software and such other material and Documentation (including any technical information, password/encryption details required to access the Developed Software);

Statement of Work means an Order for the purchase of Services agreed in accordance with the provisions of Clause 2 specifying, among other things, the Services, Supplier Application, Deliverables, Statement of Work Commencement Date, the applicable Charges, the billing period and the other matters identified in the Statement of Work;

Statement of Work Commencement Date means the date for commencement of the Services specified in an Order;

Subcontractor means any subcontractor or supplier (including any other member of the Supplier Group) engaged by the Supplier in connection with this Agreement or the provision of any of the Services;

Supplier Application means the software (and all related Deliverables) described or referred to in an Order to which the Company is to be given access on the terms of that Order;

Supplier EULA means the licensing agreement for Supplier provided software (on-premise or cloud based) which covers the usage and rights for access to the Supplier software found at <https://bcn.co.uk/terms-and-conditions/>;

Supplier Group means each undertaking that is, at the time in question and from time to time, a parent undertaking, or subsidiary undertaking of a parent undertaking or the Supplier (the terms parent undertaking and subsidiary undertaking being interpreted in accordance with section 1162 of the Companies Act 2006);

Supplier Materials means: all materials, equipment, documents and other property of the Supplier;

Supplier Personnel means: (a) any individual employed or engaged by the Supplier; and (b) the Subcontractor and any individual employed or engaged by the Subcontractor in connection with this Agreement or the provision of any of the Services;

Supplier Premises means premises from which the Supplier, any Subcontractor or any Supplier Personnel provide any part of the Supplier Application and/or Services or in which books and records relating to the Services or this Agreement are stored;

Term means the period commencing on and from the Initial Term Start Date, or the Renewal Term Start Date, and ending on the Expiry Date, or in the case of a Statement of Work, the period commencing on and from the Statement of Work Commencement Date and ending on the expiry date stated in the Order;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

UK GDPR has the meaning set out in the definition of Data Protection Laws; and

VAT means value added tax as provided for in the Value Added Tax Act 1994.

- 1.2 unless the context otherwise requires, any gender includes all genders; the singular includes the plural and vice versa; and a reference to a person includes firms, partnerships, LLPs, associations, corporations, and bodies corporate;
- 1.3 a reference to a party shall include its permitted successors and assigns;
- 1.4 a reference to any enactment, order, regulation, code, standard, policy or other instrument shall be construed as a reference to the same as amended, replaced, consolidated or re-enacted from time to time;
- 1.5 a reference to this Agreement includes all Statement of Works, Service Schedules, Service Operating Manuals and Orders made under this Agreement;
- 1.6 a reference to this Agreement or to any other document shall include any permitted variation, amendment, or supplement to such document;
- 1.7 a reference to any clause, schedule, appendix or paragraph is a reference to such Clause, Schedule, Appendix or paragraph to or of this Agreement;

- 1.8 headings are for convenience of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.9 any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.10 any words following the terms including, include, for example (or similar) shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms, and so that any examples that are given are not to be exclusive or limiting examples of the matter in question; and
- 1.11 if there is any conflict between any document incorporated by reference to this Agreement, then such conflict will be resolved by giving precedence to such different parts of this Agreement in the following order of precedence:
 - a) the provisions contained in the Order;
 - b) the Statement of Works including all documents specifically referred to therein;
 - c) the Services Schedules including all documents specifically referred to therein;
 - d) the Supplier EULA;
 - e) this Agreement including all documents specifically referred to therein;
 - f) the Customer Agreement / Licence Agreements; and
 - g) the Service Operating Manual.

2 BASIS OF THIS AGREEMENT

- 2.1 This Agreement governs the overall relationship of the parties in relation to the Services provided by the Supplier to the Company.
- 2.2 The Supplier shall provide the Services to the Company on and subject to the terms and conditions of this Agreement.
- 2.3 The Services supplied by the Supplier to the Company may be subject to service specific terms and conditions from time to time in relation to the Company's access and/or use of the Services due to the nature of the Services or because the Supplier provides the Services as a reseller for a Related Service Provider. Such service specific terms shall be set out in the Order and/or Service Schedule.
- 2.4 Any Order signed by both parties constitutes an offer by the Company to purchase the Services in accordance with the terms of this Agreement.
- 2.5 Each Order shall form a separate contract made between the Company and the Supplier. The Service Operating Manual shall be a reference document only.
- 2.6 The Company acknowledges that certain Services may be provided by Related Service Providers as part of a multi-supplier environment where the Supplier acts as a reseller of

the Services. Accordingly, the Company will co-operate with and assist each such Related Service Provider.

- 2.7 The terms and conditions set out in this Agreement apply to the exclusion of any other terms that the either party seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.8 No addition to, variation of or exclusion of any term of this Agreement shall be binding on either party unless in writing and signed by a duly authorised representative of each party or is processed through the Supplier's online ordering system.

3 AGREEMENT TERM AND RENEWAL

- 3.1 Subject to Clause 3.3, this Agreement shall commence on the Effective Date and unless terminated earlier in accordance with its terms, shall continue until the Expiry Date ("Initial Term"). The Term of this Agreement shall automatically be extended for 1 year ("Renewal Term") at the end of the Initial Term and at the end of each Renewal Term unless either Party has provided at least 3 months' prior written notice of its intention to terminate this Agreement, such notice to expire no later than the expiry of the Initial Term or the applicable Renewal Term, as appropriate.
- 3.2 The Expiry Date is calculated as follows:
- a) for the Initial Term: the Expiry Date is the Initial Term Start Date plus the term specified in the Order as applicable. If an Order expressly states it is for a fixed term only or contains only items under 'One Time Pricing', the Expiry Date shall be the last day of the fixed term or the last delivery date of the items listed under 'One Time Pricing' and a Renewal Term shall not be applicable; and
 - b) for the Renewal Term: the Expiry Date is the Renewal Term Start Date plus either:
 - (i) 12 months if the Initial Term or Renewal Term is automatically renewed, as defined in Clause 3.1; or
 - (ii) the term specified in the Order for the Services being renewed.

- 3.3 If applicable, each Statement of Work shall commence on its Statement of Work Commencement Date and shall continue, unless previously terminated or renewed according to the terms of the Order, until the expiry date stated in the Order.

4 SERVICES AND SUPPLIER OBLIGATIONS

- 4.1 The Services shall be provided from the Service Live Date or in accordance with any Project Plan referred to in the Order.
- 4.2 In supplying the Services, the Supplier shall:
- a) perform the Services in accordance with Good Industry Practice;

- b) perform the Services in all material respects in accordance with the Service Levels;
 - c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
 - d) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in this Agreement; and
 - e) comply with all applicable Laws.
- 4.3 Save as expressly provided in this Agreement, all conditions, warranties and other terms express or implied are strictly excluded to the fullest extent permitted by law. In particular the Supplier does not give any warranties, guarantees or assurances regarding the performance of the Services (including Equipment provided as part of the Services) when used with, or run in conjunction with, any particular operating systems and/or software of the Company or any third parties.
- 4.4 The Supplier shall (if requested by the Company) procure the third-party licences and or services as set out in the applicable Order. The Supplier expressly excludes any warranty to the Company that the Related Service Provider Services supplied or licensed by it under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations. The Company shall remain liable for any and all payments owed to the Supplier throughout this Agreement from the point of acquisition of the licence and until the end of the respective licence terms and shall adhere to any end user licence agreements and any other agreements sent by such third party in relation to the Related Service Provider Services.
- 4.5 It is a condition of this Agreement that the Company shall enter into such direct Licence Agreements issued by the Related Service Provider where the Company must directly contract with that Related Service Provider as so prescribed by the relevant software owners of each Related Service Provider Service identified within this Agreement and/or in the applicable Order. In the event the Company does not accept the terms of such Licence Agreements (whether directly contracted with the Supplier or the relevant Related Service Provider), the Supplier reserves the right to suspend the provision of the Services until such time as the Company enters into such Licence Agreement.
- 4.6 For the avoidance of doubt, the Supplier shall only be held liable to the extent permitted under the respective Licence Agreements for the actions or omissions of any third parties and shall not be held liable for the actions and or omissions of any other third party

including but not limited to Microsoft (whereby the Company will have a direct contract in place with Microsoft through the Customer Agreement).

- 4.7 The service level agreements provided by the Related Service Provider shall pass-through to the Company as set out in the applicable Order or Licence Agreement (as the case may be). The Supplier shall be not responsible for any failure of the Related Service Provider to meet any service level agreements including any triage services provided by the Supplier in relation to such Related Service Provider Services.

5 EQUIPMENT

- 5.1 Where the Services include the sale of Equipment by the Supplier as set out in the applicable Order, Schedule 1 of this Agreement shall apply. .

6 NCE SUBSCRIPTION SERVICES

- 6.1 Where the Services include the supply of NCE CSP Subscription Services,
- a) the provisions of Schedule 2 shall apply, and
 - b) the Supplier will use reasonable endeavours to provide support for platform related issues and where deemed appropriate by the Supplier provide escalation support to Microsoft to help resolve platform level issues. The Supplier does not provide a Service Level where the Services include the supply of NCE CSP Subscription Services. and no additional related support services.

7 SUPPLIER SOFTWARE

- 7.1 Where the Services include the supply of Supplier software and Intellectual Property, the provisions of the Supplier EULA shall apply.

8 COMPANY DEPENDENCIES AND OBLIGATIONS

- 8.1 The Company acknowledges that the Supplier is dependent upon the Company fulfilling the Company Dependencies in order for the Supplier to deliver the Services and satisfy its obligations under this Agreement.
- 8.2 The Company will at all times:
- a) comply with applicable laws;
 - b) use the Services only for lawful purposes and in accordance with this Agreement and not store, distribute or transmit any material through the Services is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive, facilitates illegal activity, depicts sexually explicit images or promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities;

- c) provide the Supplier with access to appropriate members of staff and nominated third parties and shall procure that such members of staff and third parties follow the reasonable instructions of Supplier support personnel with respect to provision of the Services and the resolution of defects;
- d) use reasonable endeavours to co-operate with the Supplier in all matters relating to the Services and comply timeously with its obligations under this Agreement;
- e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Company's premises, and provide any additional related information as requested by the Supplier;
- f) ensure that the Company's hardware, and operating software for such hardware is compatible with the Services including any Related Service Provider Services and the Supplier gives no warranty in relation thereto unless agreed otherwise in writing between the parties in the Order;
- g) promptly notify the Supplier of any proposed change to the agreed requirements set out in this Agreement, such change to be agreed in writing between the parties;
- h) provide any consents, instructions or approvals promptly which are necessary for the provision of the Services. For the avoidance of doubt, the Company shall ensure it has suitable licences in place, before the date on which the Services are to start, for any third party software required (which is not issued by the Supplier) to allow the Supplier and its subcontractors full use in relation to the Services provided;
- i) where the Company does not give its written approval, sign off, authority to proceed or similar, provide the Supplier with its reasons for not doing so; and
- j) procure for the Supplier such access and use of the Company's premises and facilities, systems, software, licences and computing environment and it shall where it is able to under the terms of its existing licences grant to Supplier a nonexclusive, royalty free licence, during the term of the Agreement to use the same solely for the purpose of delivering the Services;
- k) provide such information including documentation or data as the Supplier may reasonably request in order to carry out the Services in a timely manner and ensure such information is complete and accurate in all material respects;
- l) shall remain responsible for the use of the Services under its control, including any use by third parties that the Company has authorised to use the Services;
- m) permit the Supplier to install the current version of software required to provide the Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;

- n) maintain and allow the Supplier continuous global admin access unless set out in the Order to the Company's relevant Microsoft cloud Services portals for the duration of this Agreement;
- o) (for procurement of Microsoft products only) adhere and agree to the Customer Agreement and Schedule 1;
- p) where a Microsoft Cloud service is deployed / utilised within the applicable Service (Azure or Office365) the Supplier will be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR) and/or Digital Partner of Record (DPOR) and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) and Admin on Behalf of (AOBO) for a minimum of twelve (12) months from Service completion date;
- q) in respect of any Microsoft funded services (if applicable), sign and deliver the Microsoft Proof of Execution ("**POE**") within seven (7) days of the date of issue by Microsoft. In the event that the Company does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Company the amounts directly and the Company shall follow the payment terms in this Agreement;
- r) keep and maintain the Supplier Materials at the Company's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- s) shall not provide the Services to third parties without the prior written consent of the Supplier;
- t) be responsible for obtaining and maintaining the Company's own compatible computer system being all such equipment, software and communications lines, including any public lines required by the Company to access the Services. The Supplier has no responsibility for or liability with respect to the Company's Equipment unless such Equipment was supplied by Supplier; and
- u) use an up-to-date virus-scanning program on all the Company Materials or Company data received, maintained or transmitted to the Supplier to ensure these are free from any defects, viruses or vulnerabilities.

8.3 The Company acknowledges that Supplier does not operate or exercise control over, and accepts no responsibility for the content of the Company Materials received on the system.

8.4 The Company agrees and acknowledges the terms of the applicable Licence Agreements (which shall be set out in the applicable Order or as notified by the Supplier to the Company from time to time) and the terms of the Customer Agreement shall form part of this Agreement. For the avoidance of doubt, the Company shall give express authority to

the Supplier to agree and accept any Licence Agreements which need to be accepted in order that the Supplier may fulfil the Services and to provide such Related Service Provider Services and the Company shall not hold the Supplier liable for any loss or damage caused by accepting such Licence Agreements on behalf of the Company. In the event the applicable Licence Agreements and/or the Customer Agreement is not applicable to the Services being received or delivered by the Supplier to the Company under this Agreement, such agreements shall not apply.

8.5 Further Company Dependencies which are specific to the Services shall be set out in the Order and/or Service Schedule as applicable.

8.6 In the event the Company fails to meet a Company Dependency then:

- a) The Supplier shall give the Company written notice of the breach with thirty (30) days' notice to remedy the breach, if it can be remedied and if necessary, the Supplier at its sole discretion, may agree a change to this Agreement to deal with the impact of such failure, including revising any Project Plan, timescales and Charges;
- b) the Supplier may charge for such additional costs incurred;
- c) the Supplier shall (without limiting its other rights or remedies) have the right to suspend supply of the Services until the Company remedies its breach of the Company Dependencies, and until the breach is remedied the Supplier shall be relieved from performing any of its obligations under the Contract, if such obligations cannot be performed due to the Company's breach of the Company Dependencies;
- d) the Company shall reimburse the Supplier for any costs or losses arising directly or indirectly from the Company's breach of the Company Dependencies;
- e) the Supplier may raise an interim invoice for any work already completed; and
- f) the Supplier shall not be liable for any delay, failure to comply with the terms of this Agreement, failure to deliver a Deliverable, failure to meet any Service Levels or any Losses incurred by the Company or any third party as a result of the Company's failure to meet the Company Dependency and the Company shall not be entitled to exercise any rights as a result of such failure.

9 LICENCES

9.1 Subject to the terms and conditions of this Agreement, the Supplier grants to the Company and each Group Company a non-exclusive, non-transferable irrevocable, non-transferable and royalty-free licence to use the Services (including the Supplier Application and Documentation specified in an Order) for the internal business purpose of the Company or any Group Company (as applicable).

- 9.2 If the Supplier has agreed to install, patch or otherwise manage software for the Company in reliance on the Company's licence with a software vendor (other than the Supplier's licence with such software vendor), then the Company represents and warrants that it has a written licence agreement with the software vendor that permits the Supplier to perform these activities. On the Supplier's request the Company must immediately certify in writing that it is in compliance with the requirements of this Clause 9 and any other software licence.
- 9.3 If the Company fails to provide upon request the required evidence of licensing, the Supplier may, at its option:
- a) charge the Company the standard fee for the use of the software in reliance on the Supplier's licensing agreement with the vendor until such time as the required evidence is provided;
 - b) carry out a chargeable audit into the licensing arrangements of the Company on providing the Company with reasonable prior notice; or
 - c) suspend or terminate this Agreement.
- 9.4 In the event of termination or expiry of this Agreement, the licence granted pursuant to Clause 9.1 shall terminate automatically on the date of such termination or expiry and the Company shall immediately cease all use of any Supplier Intellectual Property Rights and if so required by the Supplier, return or destroy documents and materials that contain any of the Supplier Intellectual Property Rights.

10 DISPUTE RESOLUTION

- 10.1 In the event that a Dispute arises between the parties, then before bringing any suit, action or proceeding in connection with such Dispute, a party must first give written notice of the Dispute to the other party describing the Dispute and requesting that it is resolved under this dispute resolution process ("Dispute Notice").
- 10.2 If the parties' Representatives are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five (5) Business Days thereafter):
- a) appoint a designated senior management Representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of the Agreement ("Senior Representative"); and
 - b) notify the other Party in writing of the name and contact information of such Senior Representative.
- 10.3 The Senior Representatives will then meet as often as they deem necessary in their reasonable judgement to discuss the Dispute and negotiate in good faith to resolve the

Dispute. The Senior Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party will be honoured..

- 10.4 If the parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Senior Representatives, then either Party may proceed with any other available remedy.

11 AUDIT AND INSPECTION

- 11.1 Without prejudice to the Supplier's rights pursuant to Clause 9.3b), for the purpose of ensuring the Supplier's and Company's compliance with this Agreement, subject to clause 11.4 each party shall permit Auditors to conduct an audit during the Term and for a period of 12 months after the end of this Agreement, provided the party requesting the audit has given at least 2 weeks' prior written notice.
- 11.2 Audits will be conducted during normal business hours on a Business Day and the Auditors shall at all times comply with the safety and security rules and regulations of the party subject to the audit.
- 11.3 The party requesting the audit agrees to reimburse the party being audited for all costs reasonably incurred in complying with any audit request.
- 11.4 Audits may not be conducted more frequently than once in any 12 month period unless required by Law.
- 11.5 The party requesting the audit shall procure that the Auditors shall, when conducting an audit, minimise any disruption to the business of the party being audited and that the Auditors will operate under a duty of confidence in relation to information disclosed for the purposes of such audit.

12 ACCEPTANCE TESTING

- 12.1 Where the Order states that Services and/or Deliverables shall be subject to Acceptance Testing, then this Clause 12 (and the applicable terms of the relevant Order) shall apply. The acceptance criteria and test data which are required to show that the Deliverables comply with any pre agreed specifications in Order for the Acceptance Testing shall be agreed by both parties in writing ("Acceptance Criteria").
- 12.2 In relation to Acceptance Testing;
- a) The Company shall have a reasonable period of time, up to 2 Business Days unless otherwise specified in the Order, from the Supplier's delivery of each Deliverable under the relevant Order ("Acceptance Periods") to confirm that such Deliverable conforms to the Acceptance Criteria as specified or referred to in an

Order or as otherwise agreed between the Parties. If the Company determines that a Deliverable does not conform to the Acceptance Criteria, the Company shall by the last day of the Acceptance Period provide to the Supplier a written list of the non-conformities to the Acceptance Criteria;

- b) The Company shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverables which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period if any of the Deliverables do not conform to the Acceptance Criteria. In the event that Company has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under this Agreement such Deliverable, shall be deemed accepted as if the Company had issued a written acceptance thereof. Once the Deliverable has been accepted by the Company and payment has been settled in accordance with Clause 13, the Deliverable shall become the property of the Company. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 12.2c) below.
- c) If there are any non-conformities within any Deliverable, which have been highlighted by Company or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Company for this reason and such non-conformity is a directly attributable act or omission on the part of the Supplier, the Supplier shall (without prejudice to the Company's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- d) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Company to be outside the Supplier's control and which has disabled the Supplier's ability to remedy such non-conformity, then the Supplier reserves the right to terminate work on that specific Deliverable. The Supplier agrees not to charge Company, any amounts paid or payable by the Company to the Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied.

13 CHARGES AND PAYMENT

13.1 In consideration of the Supplier performing its obligations under this Agreement the Company shall pay the Charges for the Services.

13.2 Where the price of Hardware or Services is in a currency other than pounds sterling and the price provided in an Order is in pounds sterling the price is based on the Suppliers

currency exchange rates (including any applicable commissions for currency conversion) on the day of the Order. Where pricing is subject to current fluctuations this will be highlighted on the Order. Pricing is by way of convenience only and is subject to currency fluctuation. Unless specified in the Order, any currency fluctuations in the pricing from the Order date to the invoice date will be applied to the invoice price. Pricing fluctuations would be applied over the term of the Agreement.

13.3 The Supplier may invoice the Company on the following basis:

a) For Professional Services:

(i) Where Charges are determined in the Order to be payable on a Milestone basis:

1. The Supplier shall invoice the Company for the Charges associated with the first Milestone upon the Customer's acceptance of the Order; and
2. Thereafter, the Supplier shall invoice the Company for the Charges associated with each Milestone, on completion of the respective Milestones.

(ii) Where the Charges are determined in the Order to be payable on a payment profile basis:

1. Upon the Company's acceptance of an Order, the Supplier shall invoice twenty five percent (25%) of the total Charges; and
2. Thereafter, the Supplier shall invoice the Company for the Charges associated with each payment stage, as detailed in the Order.

(iii) Where the Charges are determined in the Order to be payable on completion of the Professional Services, and the deliverables are related to Developed Software:

1. Upon the Company's acceptance of an Order, the Supplier shall invoice fifty percent (50%) of the total Charges; and
2. Thereafter the Supplier shall invoice the remaining fifty percent (50%) of the total Charges once it has delivered the Professional Services.

(iv) Where the Charges are determined in the Order to be on a time and material basis, the Supplier shall invoice the Company monthly in arrears based on the time and materials recorded by the Supplier's engineers.

b) For Equipment, the Supplier shall invoice the Company on dispatch;

- c) For third party software licences, the Supplier shall invoice the Company on the later of the date of purchase or charge incurred by the Supplier from the Related Service Provider;
- d) For third party network services, the Supplier shall invoice the Company on the date of activation; and
- e) For the provision of all other Services, including Managed Services, unless stated otherwise in the Order or Service Schedule, the Supplier shall invoice the Charges monthly in arrears.

13.4 All Expenses incurred by the Supplier will be invoiced in arrears as incurred at cost.

13.5 Where a Statement of Work Commencement Date has been agreed and the Company;

- a) requests to change Statement of Work Commencement Date, or
- b) requests to cancel the work, or
- c) is unable to meet the Company Dependencies as set out in this Agreement, which would therefore require the Company to request a change in the Statement of Work Commencement Date,

and where the Supplier is unable to reasonable redeploy the resources that have been allocated to carry out the work, the Supplier will, in its sole discretion, reject the request. Should the Company not allow the work to be carried on the originally agreed Statement of Work Commencement Date the Supplier will be entitled to invoice the Company for the relevant work as follows:

- a) notice of 4 weeks or more – 0% payable;
- b) notice of 7 Business Days but less than 4 weeks' notice – 50% payable;
- c) notice of 4 Business Days to 6 Business Days – 75% payable;
- d) notice of less than 1 Business Day to 3 Business Days – 100% payable.

13.6 Invoices issued by the Supplier will:

- a) be valid tax invoices for the purposes of VAT legislation and be invoiced in pounds sterling;
- b) identify the parties, specify the Services to which the invoice relates and include the purchase order number or other reference number that may have been provided by the Company to the Supplier in connection with this Agreement and/or Order; and
- c) be sent to the address as may be notified to the Supplier from time to time.

13.7 The Company shall pay Charges in full and clear funds for the Services by direct debit unless otherwise set out in the Order and within 30 days from the date of a valid invoice from the Supplier, provided that day is a Business Day, otherwise the next Business Day

after such date, unless different payment terms are agreed by the parties in the Order. Time for payment shall be of the essence under this Agreement.

- 13.8 The Company must maintain a valid direct debit mandate for the Term, unless otherwise agreed by the parties in the Order.
- 13.9 The Supplier reserves the right to charge an additional sum of 10% of the Charges in the event the Company fails to maintain a valid direct debit mandate and thereafter fails to reinstate the direct debit mandate within 14 days of receipt of notice from the Supplier, unless the parties agree that payment shall not be via direct debit in accordance with Clause 13.7 above.
- 13.10 If any undisputed sum payable under this Agreement is not paid when due then the Supplier may claim interest from the due date until payment is made in full both before and after any judgment, at 5% per annum over the Bank of England Bank Rate from time to time but at 5% a year for any period where the Bank Rate is below 0%.
- 13.11 The Company shall not be able to dispute any amounts which have been paid by the Company after a period of three (3) months has elapsed from the date of invoice.
- 13.12 Any sum payable is exclusive of VAT which shall be payable in addition to that sum, and all payments by the Company shall be made without deduction or set off of any amount.
- 13.13 The Supplier shall be entitled to increase the Charges as follows:
- a) any increase in the consumer price index which impacts the Suppliers costs in delivering the Services (excluding any increases set out in Clauses 13.13b), c)13.13c)), 13.13d))) whereby the Charges may be increased by the same percentage as the increase in the consumer price index, such change would be applied annually on the anniversary of this Agreement;
 - b) any increase in price by a Related Service Provider including a third party licence or third party software provider, network provider, or any third party supplier of Equipment (for the avoidance of doubt any Equipment quoted for will remain at the price quoted for so long as the Order remains valid), in all cases which is used solely for the provision of the Services;
 - c) any increase in the volume of the Services, licences or support being provided by the Supplier; and
 - d) In addition to the Supplier's right to increase the Charges in accordance with Clauses 13.13a), 13.13b)and 13.13c)the Supplier reserves the right, on giving the Company thirty (30) days' notice, to increase the Charges once in any twelve (12) month period. If the Company does not agree with the increase made pursuant to this Clause 13.13d), then the Company may terminate this Agreement upon thirty (30) days written notice and before such price increase takes effect. If the

Supplier does not receive written notice within thirty (30) days, the Company is deemed to have agreed to the amendment to the Charges.

- 13.14 Unless specified otherwise in the Order any volume for Services specified in the Order will be a minimum committed volume which cannot be reduced during the Term. Any subsequent Orders which increase the initial volume will increase the overall minimum committed volume which cannot be reduced during the term.

14 INSURANCE

- 14.1 The parties shall for the duration of the Term each maintain adequate insurance cover against all risks which would normally be insured against by a prudent business, its property, directors and employees. Evidence of such insurance shall be provided on request by the other party.

15 TERMINATION

- 15.1 Either party may by written notice (of such period as shall be set out in that written notice) served on the other party terminate this Agreement if:

- a) the other party is the subject of an Insolvency Event;
- b) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- c) the other party materially breaches its obligations under this Agreement (which shall include non-payment, as defined in Clause 13, of any Charges due under this Agreement and failure to maintain a valid direct debit mandate) and does not fix such breach within 30 days of receiving written notice to do so.

- 15.2 The Company will be entitled to terminate this Agreement where there are more than 4 Business Critical Service Failures in any consecutive 12 month period. The Company must give notice in writing of its intent to terminate this Agreement stating clearly this Clause and the relevant business critical service failures, and must do so within 30 days of the last business critical service failure. Where such notice is not provided the Company acknowledges that it will no longer be entitled to terminate this Agreement under this Clause for the stated business critical service failures. In all circumstances the Supplier must be given the opportunity to remedy the failures and that the Company reasonably accepts these remedies in lieu of termination. The following exclusions apply to a Business Critical Service failure, and are in addition to any restrictions specified in relevant Service Schedules

- a) A failure of a Microsoft regional datacentre
- b) Any failure which would trigger a Business critical Service failure, where the failure is caused in part or wholly by the Company.

- c) Any failure caused by a security breach by a 3rd party where the Supplier can demonstrate appropriate levels of patching and security controls were in place at the time of or just before the incident
 - d) Any failure where the cause of such failure is one of malicious intent by a 3rd party or the Company where the Supplier can demonstrate appropriate levels of patching and security controls were in place at the time of or just before the incident
 - e) Where a patch deployment has been attempted and failed due to technical reasons beyond the Suppliers reasonable control
- 15.3 Without prejudice to any rights that the Supplier has accrued under this Agreement or any of its respective remedies, obligations or liabilities, the Supplier may terminate this Agreement with immediate effect by giving notice to the Company if;
 - a) the Company breaches its obligations in Clause 8.6a); or
 - b) the Company breaches any of the terms of Clause 23 (Data Protection), Clause 25 (Confidentiality).
- 15.4 If for any reason an agreement between a Related Service Provider and the Supplier relating to the Supplier's right to use, install or support third party software which is the subject of the Agreement is terminated and the Supplier at its discretion cannot replace such third party with an alternative provider, then the Agreement or applicable Order (as the case may be) shall automatically terminate, save that where the Agreement relates to other Deliverables other than that third party software, termination of the Agreement shall operate only in so far as it relates to such third party software.
- 15.5 If an Order or Service Schedule survives the expiry or termination of this Agreement, the terms of this Agreement will continue in force for the purpose of that Order, notwithstanding their expiry or termination for other purposes.

16 EFFECT OF TERMINATION OF THIS AGREEMENT

- 16.1 In the event of termination or expiry of this Agreement:
 - a) The Supplier shall immediately cease provision of the Services (or the applicable part);
 - b) with effect from the Expiry Date, the parties shall cease to use the other party's materials, data and the Confidential Information and shall, to the extent it is practicable to do so, destroy all copies of the other party's data and Confidential Information.
 - c) Where requested in writing the Supplier will retain the Company Data for a maximum of 2 weeks beyond the Expiry Date. If the Company has requested in writing, and the Supplier has agreed to retain the Company Data beyond the 2

weeks, the Supplier will do so for such agreed period after termination provided that:

- (i) the Company has signed a new Order for the retention of the Company Data;
 - (ii) the Company pays the Supplier for the retention of the Company Data at the Supplier's then prevailing rates;
 - (iii) the Supplier shall be entitled to invoice in advance for such retention that it considers reasonable, the Order will state such provision;
- d) this Agreement shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after termination, in particular in respect of Statements of Work that may be continuing or any retention of Company Data pursuant to Clause 16.1a) above; and
- e) the rights of either party accrued on or prior to termination or expiry shall remain unaffected.

16.2 Upon termination of this Agreement by the Company for any reason other than those under Clause 15.1, 15.2 and 18, the Company shall pay any Charges remaining unpaid for Services in accordance with this Agreement up to the end of the Term.

16.3 Upon early termination of this Agreement as a result of any of the termination events occurring under Clauses 15.1, 15.2 and 18, the Company shall pay any Charges remaining unpaid for Services in accordance with this Agreement up to the termination date. Where the Supplier is committed to pay licensing, network and connectivity charges with Related Service Providers beyond the date of termination, then the Company will continue to pay such charges until those commitments come to an end. The Supplier will use reasonable endeavours to mitigate these commitments, or transfer the commitments to the Company.

17 HANDOVER / EXIT

17.1 If the Company has requested in writing in accordance with Clause 29, for the Supplier to provide assistance in relation to transitioning the terminated Services, the Supplier will use reasonable efforts to provide the assistance requested for such agreed period after termination provided that:

- a) the Company pays the Supplier for its assistance at the Supplier's then prevailing time and materials rates;
- b) the Supplier shall be entitled to invoice in advance for such part of the anticipated assistance that it considers reasonable;

- c) where the transition is to an alternative provider that provider shall have entered into with the Supplier confidentiality undertakings in form and substance reasonably acceptable to the Supplier;
- d) the Supplier will not be obliged under this Agreement to provide any assistance where in the Suppliers reasonable opinion providing such assistance would impact the Suppliers competitive position; and
- e) the Supplier will not be obliged to make available any Supplier intellectual property or confidential information to the Company or any alternative provider as part of the transitioning of the terminated services. If the Supplier reasonably believes it would disclose such information in delivering such assistance the Supplier will have the right to decline to provide such assistance.

18 FORCE MAJEURE AND RELIEF EVENT

- 18.1 Neither party shall be in breach of this Agreement or otherwise liable to the other party for any failure to perform or delay in performing its obligations under this Agreement and either party reserves the right to defer the date of provision of the Services if either party is prevented from or delayed in performing its obligations under this Agreement due to a Force Majeure Event.
- 18.2 If the Force Majeure Event in question continues for a continuous period in excess of 30 days, either party shall be entitled to terminate this Agreement (or such part of this Agreement affected by such event) immediately by giving notice in writing to the other party.
- 18.3 Subject to Clause 21.1, and notwithstanding any other provision of this Agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

19 WARRANTIES AND REPRESENTATIONS

- 19.1 Each party represents and warrants to the other that:
 - a) it has full power and capacity to execute, deliver, and perform its obligations under this Agreement;
 - b) it has entered into this Agreement in reliance upon its own enquiries, investigations and other due diligence;
 - c) it has, and will maintain, all licenses and consents that it requires in order to perform its obligations under this Agreement; and
 - d) at the Effective Date there are no actions, suits or proceedings or regulatory investigations pending or, to its knowledge, threatened against it before any court

or administrative body or arbitration tribunal that might affect its ability to meet and carry out its obligations under this Agreement.

20 INDEMNITIES

- 20.1 Each party shall indemnify the other against all liability to the extent arising as a result of any infringement of any Intellectual Property Rights of any third party directly attached to any software or materials provided by the other party in the performance of the Services.
- 20.2 Subject to Clauses 20.3 and 20.4, if any IPR Claim is made against the Company, the Supplier at its own expense shall take control of and conduct any litigation in relation to such IPR Claim and all negotiations for settlement of the IPR Claim shall be dealt with by the Supplier. The Supplier shall be responsible for any payments in relation to the IPR Claim (either by way of a lump sum or a continuing royalty payment) made in settlement, or as a result of an award in a judgment against the Supplier.
- 20.3 Subject to Clause 20.4, the Company shall only have the rights granted by Clause 20.2 if the Company gives the Supplier the earliest possible notice in writing of any such IPR Claim being made or action threatened or brought against it, and the Company shall make no admission of liability or take any other action in connection with the IPR Claim. The Company shall permit the Supplier to have the conduct of the IPR Claim pursuant to Clause 20.2 and shall (at the Supplier's expense) give all reasonable information, co-operation and assistance to the Supplier (including without limitation lending its name to proceedings) in relation to the conduct of the IPR Claim.
- 20.4 The provisions of Clause 20.2 shall not apply to any infringement caused by the Supplier having followed any specification or instructions given by the Company or use of the Services for a purpose prohibited by the Supplier, or to any infringement which is due to the use of the Services in association or combination with any other software or product (other than any software which is supplied by the Supplier as part of the Services).
- 20.5 If an IPR Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense ensure that the Company is still able to use the Deliverables by either;
- a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Company, such acceptance not to be unreasonably withheld; or
 - b) procuring a licence or permission to use the Deliverables on terms which are acceptable to the Company, such acceptance not to be unreasonably withheld.

- 20.6 Except to the extent that the Supplier should reasonably have known or advised the Company the foregoing provisions of Clause 20.5, the Supplier shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from;
- a) any use by or on behalf of the Company of the combination with any item not supplied or recommended by the Supplier where such use of the Deliverables directly gives rise to the claim, demand or action; or
 - b) any modification carried out on behalf of the Company to any item supplied by the Supplier under this Agreement if such modification is not authorised by the Supplier in writing where such modification directly gives rise to a claim, demands or action.
- 20.7 The parties acknowledge that the indemnities provided in this Clause 20 are in addition to the indemnities provided in Clause 34.

21 LIABILITY

- 21.1 Neither party excludes nor limits its liability (if any) to the other:
- a) for personal injury or death caused by its negligence;
 - b) for fraud or fraudulent misrepresentation; or
 - c) any other liability which cannot lawfully be excluded or limited
- 21.2 The Supplier's liability for the indemnities set out at Clause 20.1 and for breach of its obligations under Clause 23 and Clause 25 shall be limited to £500,000 in the aggregate.
- 21.3 Subject to Clause 21.1, 21.2 and 21.4, the Supplier's maximum aggregate liability arising out of or in connection with this Agreement, whether in contract (including in respect of any indemnities contained in this Agreement), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of an individual Service will be limited to a sum equal to 125% of the Charges paid by the Company for that individual Service under this Agreement during the Agreement Year immediately preceding the date on which the claim arose.
- 21.4 Subject to Clause 21.1, neither party shall have any liability to the other party for:
- a) any damages for lost profits, lost revenues, loss of sales, loss of business or business opportunity, loss of or damage to or corruption of data, loss of contract or agreements, loss of reputation, loss of or damage to goodwill, loss of anticipated savings, wasted expenditure, in each case whether direct or indirect (and regardless of whether either party has been advised of the possibility of such losses or damages); or
 - b) any special, indirect or consequential loss however arising under this Agreement.

22 INTELLECTUAL PROPERTY

- 22.1 The Company shall not acquire any right, title or interest in the Intellectual Property Rights of the Supplier or its licensors which shall be the exclusive property of and shall vest in the Supplier or its licensors (as appropriate).
- 22.2 All rights, title and interest (including all Intellectual Property Rights) in and to the Company Materials shall be the exclusive property of and shall vest in the Company.
- 22.3 The Company hereby authorises the Supplier to use any Intellectual Property Rights in materials provided to the Supplier by the Company for the purposes only of performing its obligations under this Agreement. The Supplier will have no other rights in respect of the Intellectual Property Rights of the Company or the Intellectual Property Rights in any materials provided to the Supplier by the Company.
- 22.4 All Intellectual Property Rights in the Developed Software (including all Intellectual Property Rights in all source code of that Developed Software), Deliverables or works otherwise created as part of and arising from the provision of the Services are owned and shall remain owned by the Supplier but the Company is hereby granted a non-exclusive, non-transferable perpetual licence to copy and use such Developed Software, and where agreed in writing the source code of the Developed Software, and Deliverables for its own internal purposes. The Developed Software and Deliverables may only be disclosed to third parties with the Supplier's prior written consent.
- 22.5 The Company shall be responsible for all third party software provided to or licensed to the Supplier as part of the Company software, being any software which is owned or licensed by the Company (other than pursuant to this Agreement) which is used or will be used by the Supplier in providing the Services.
- 22.6 In relation to any Supplier Intellectual Property, the Company acknowledges that such Supplier Intellectual Property may only be compatible with the current versions of other software and/or hardware as indicated by the Supplier to the Company and the Supplier provides no guarantee that such Supplier Intellectual Property will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the Parties in writing, the Supplier is under no obligation to supply the Company with any updates or add-ons to any Supplier Intellectual Property.

23 DATA PROTECTION

- 23.1 In respect of any Personal Data Processed by the Supplier on behalf of the Company in the performance of the Services, the parties acknowledge and agree that the Company shall be the Controller and the Supplier shall be the Processor.
- 23.2 In respect of such Processing, the Supplier undertakes that it will:

- a) Process the Personal Data solely on the Company's lawful, documented instructions (as set out in this Agreement) and for the purpose of performing the Services;
- b) take appropriate technical and organisational measures to prevent unauthorised or unlawful Processing or, accidental loss or destruction of or damage to such Personal Data including all such measures required by Article 32 of the UK GDPR;
- c) take reasonable steps to ensure the reliability of the Supplier Personnel who may have access to the Personal Data, and ensure those Supplier Personnel are subject to binding obligations of confidentiality;
- d) without undue delay any in any event within 5 Business Days of receipt, notify the Company of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from the Information Commissioner's Office) of which the Supplier is aware, relating to either Party's obligations under the Data Protection Laws in respect of the Personal Data;
- e) notify the Company without undue delay upon becoming aware of a Personal Data Breach;
- f) provide reasonable assistance to the Company on request in relation to:
 - (i) any communication received under Clause 23.2d); and
 - (ii) any Personal Data Breach,
 - (iii) including by implementing appropriate technical and organisational measures;
- g) cease Processing of the Personal Data upon expiry or earlier termination of this Agreement and upon the Company's request, either return to the Company or securely delete the Personal Data; and
- h) permit the Company or its Representatives (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit, on reasonable written notice (at least 4 weeks), the Supplier's data Processing activities (and/or those of its agents, subsidiaries and subcontractors) and comply with all reasonable requests or directions by the Company to enable it to verify that the Supplier is in full compliance with its obligations under this Clause 23. Audits of compliance with data protection obligations are limited to once per year unless the Company has a genuine reason to believe and acting in good faith that the Supplier is in material breach of this Clause 23 or can demonstrate that it requires copies of applicable documentation to comply with Data Protection Laws or the requirements of the Commissioner or other applicable regulatory authority. In such case the Company shall act reasonably in relation to any audit request, and in a manner which results in the minimum of inconvenience to the Supplier.

23.3 The Company acknowledges and agrees that:

- a) the Supplier shall be generally authorised to appoint third parties to Process the Personal Data (“**Sub-Processor**”) subject to the Supplier notifying the Company by updating its list of Sub-processors on its website, of its intended appointment and/or replacement of Sub-Processors and otherwise meeting the conditions set out in Article 28(2) and (4) of the UK GDPR; and
- b) the Personal Data may be transferred or stored outside the United Kingdom in order to carry out the Services and the Supplier’s other obligations under this Agreement. The Supplier will take such steps as are necessary to ensure this Processing is in accordance with Data Protection Laws.

23.4 The Company shall comply at all times with its obligations under the Data Protection Laws in connection with this Agreement.

23.5 Without prejudice to Clause 23.4, the Company shall ensure that:

- a) it is entitled to transfer the relevant Personal Data to the Supplier so that the Supplier may use, Process and transfer the Personal Data in accordance with this Agreement, on the Company’s behalf; and
- b) all relevant Data Subjects have been informed of, and, where required, have given their consent to, such use, Processing, and transfer as required by all applicable Data Protection Laws.

23.6 Unless otherwise specified within the relevant Service Schedule and/or Order, the subject matter, and nature and purpose of the Processing of Personal Data by the Supplier shall be limited to such Processing as is necessary to deliver the relevant Services, and the categories of Data Subject and Personal Data types will be determined by the nature of the Company’s use of the relevant Services but may include the name and other personal identifiers of current and former employees, customers and suppliers of the Company.

23.7 The provisions of this Clause 23 shall continue in force notwithstanding the termination or expiration of this Agreement.

24 COMPANY DATA

24.1 Without prejudice to Clause 23, the Supplier shall not (and shall procure that the Supplier Personnel do not) store, copy, disclose, or use the Company Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise provided for by this Agreement.

24.2 Upon receipt or creation by the Supplier of any Company Data and during any collection, processing, storage and transmission by the Supplier of any Company Data, the Supplier

shall take the reasonable precautions necessary to preserve the integrity of the Company Data..

25 CONFIDENTIALITY

- 25.1 During the Term of this Agreement, the Company and the Supplier will need to disclose to the other Confidential Information. The Confidential Information is being provided for the sole purpose of the Supplier performing its obligations under this Agreement and is not to be used for any other purpose. For the purposes of this Clause 25, the term “Disclosing Party” shall mean a Party which discloses or makes available its Confidential Information and “Recipient” shall mean the Party which receives the Confidential Information.
- 25.2 Confidential Information does not include any information that:
- a) is or becomes publicly available (other than as a result of its disclosure by the Recipient in breach of this Agreement);
 - b) was lawfully in the Recipient’s possession free of any duty of confidentiality before the information was disclosed to it;
 - c) is independently developed by the Recipient without reference to Confidential Information of the Disclosing Party; or
 - d) the parties agree in writing is not confidential or may be disclosed.
- 25.3 The Recipient will keep the Confidential Information confidential and will not without the prior written consent of the Disclosing Party, disclose (directly or indirectly) or reveal the Confidential Information or any part of it to any person other than its Representatives which need to see such Confidential Information and the Recipient shall not use the Confidential Information for any purpose other than the proper performance of this Agreement. In addition, the Recipient agrees to reveal the Confidential Information only to those of its Representatives who need to know the Confidential Information for the purposes of this Agreement and who are informed by the Recipient of the confidential nature of the Confidential Information.
- 25.4 The Recipient agrees to use, and to cause its Representatives to use, the same degree of care that it uses to protect its own confidential and proprietary information to prevent unauthorised, use, disclosure, publication or dissemination of the Confidential Information, but in no event less than a reasonable degree of care.
- 25.5 The Recipient shall be liable under this Agreement for the acts and/or omissions of its employees, officers, agents and sub-contractors as if they were the acts and/or omissions of the Recipient.
- 25.6 If the Recipient or anyone to whom it is entitled to transmit the Confidential Information becomes required by Law to disclose any of the Confidential Information, the Recipient

shall, if legally permitted, provide prompt notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Clause.

- 25.7 The Recipient will not make, keep or reproduce any document or part of a document comprised in the Confidential Information without the prior written consent of the Disclosing Party, provided that the Recipient will be entitled to reproduce the Confidential Information without consent strictly to the extent necessary for its proper performance of this Agreement and provided it is kept securely. Further, at the request of the Disclosing Party, the Recipient will without undue delay return to the Disclosing Party all Confidential Information and any documents and materials containing, reflecting, or based on the Confidential Information and/or will use reasonable endeavours to erase on request all Confidential Information from its computer systems, except for Confidential Information stored on disaster recovery archives (or similar platforms). The Recipient will be entitled to retain copies of the Confidential Information to the extent required by Law.
- 25.8 Without the prior written consent of the Disclosing Party, neither the Recipient nor its Representatives shall disclose to any person the fact that the Confidential Information has been made available, that discussions or negotiations are taking place or have taken place concerning a transaction between the parties or any of the terms, conditions or other facts with respect to any such transaction, including the status of any such transaction.
- 25.9 The Disclosing Party reserves all rights in the Confidential Information. The Disclosing Party does not make any express or implied warranty or representation concerning the Confidential Information, or the accuracy or completeness of the Confidential Information and the Disclosing Party expressly disclaims any and all liability that may be based on the Confidential Information or any errors therein or omissions therefrom.

26 INADEQUACY OF DAMAGES

- 26.1 Without prejudice to any other rights or remedies the parties may have, each party acknowledges and agrees that damages alone may not be an adequate remedy for any breach of the terms of this Agreement by the other party. Accordingly, a party may be entitled to seek remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

27 ASSIGNMENT

- 27.1 Neither party may at any time assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of the other party, neither party to unreasonable withhold consent.

28 VARIATION

- 28.1 A variation of this Agreement shall only be effective if it is in writing and signed by both parties (or their Representatives).

29 NOTICES

- 29.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Clause, and shall be delivered personally, or sent by email, pre-paid first class post or other next Business Day delivery service, commercial courier.
- 29.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 29.1 if sent by pre-paid first class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; if sent by email on the date and at the time that the email was sent.
- 29.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

30 SEVERANCE

- 30.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Agreement.

31 WAIVER

- 31.1 A waiver of any right or remedy under this Agreement or Law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or Default. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

32 NO PARTNERSHIP AND AGENCY

- 32.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

33 THIRD PARTIES

- 33.1 A person who is not a party to this Agreement shall not have any rights to enforce its terms under the Contracts (Rights of Third Parties) Act 1999, except for Microsoft (in respect of enforcing the terms of the Customer Agreement).

34 TUPE

- 34.1 The parties acknowledge that TUPE is not intended to apply to the commencement of the Services (or any Services) by the Supplier.
- 34.2 Notwithstanding Clause 34.1, if there is deemed or alleged to be a relevant transfer for the purposes of TUPE upon the commencement of the Services (or any Services) under the Agreement (whether from the Company or a Group Company or a previous supplier as the case may be) such that the employment or engagement or any liability regarding the employment or engagement of any person is found or alleged to transfer to the Supplier or any Related Service Provider or Subcontractor:
- a) The Supplier will notify the Company of the transfer or alleged transfer and thereafter may terminate, give notice to terminate or procure the termination of the employment or engagement of such person at any time within 28 days of becoming aware of the transfer or alleged transfer;
 - b) The Company shall indemnify and keep the Supplier (for itself and on behalf of any relevant Related Service Provider or Subcontractor) indemnified for and against all and any Losses and Employment Costs suffered or incurred by the Supplier (directly or through an indemnity given to a Subcontractor or Related Service Provider), Related Service Provider or Subcontractor arising out of or in connection with:
 - (i) the employment or engagement and/or termination of employment or engagement of such person in respect of any period prior to the date of the actual or alleged transfer;
 - (ii) any failure by the Company or previous supplier to comply with its obligations under Regulation 13, 14 or otherwise of TUPE;
 - (iii) the termination of such person's employment or engagement in accordance with Clause 34.2 a); and

(iv) the Employment Costs in relation to such person in respect of the period from the date of such actual or alleged transfer to the date of termination of such person's employment or engagement in accordance with Clause 34.2 a);

- c) In the event that the Supplier (or relevant Related Service Provider or Subcontractor) does not exercise its right under Clause 34.2 a) and the actual Employment Costs relating to such person are or will be greater than those anticipated by the Supplier at the point the Charges for the relevant Services were agreed (whether as a result of the transfer of the person or relevant information not having been disclosed to the Supplier at the relevant time and/or an omission, error or change in relevant information) then there shall be a corresponding increase to the relevant Charges to ensure that the Supplier (or relevant Related Service Provider or Subcontractor) is reimbursed for the relevant Employment Costs or difference in them. The Supplier shall provide the Company with such information as the Company may reasonably request to demonstrate the difference in anticipated and actual Employment Costs for the purpose of this clause.

34.3 Where TUPE applies (or will apply) on termination or expiry of this Agreement, the Services (or any of the Services) to transfer the employment or any liability regarding the employment of any person employed by the Supplier, Related Service Provider or Subcontractor in connection with the relevant Services prior to the date of the relevant transfer ("Transferring Supplier Personnel"):

- a) The Supplier shall (and shall procure that any relevant Related Service Provider or Subcontractor shall) comply with its obligations under Regulation 11 of TUPE in respect of the provision of information regarding Transferring Supplier Personnel;
- b) The Supplier shall indemnify and keep indemnified the Company for and against all and any Losses suffered or incurred by the Company (directly or through an indemnity given in like terms to a new supplier) arising out of or in connection with:
- (i) subject to Clause 34.2b) above and 34.3c)(iii) below, the employment and/or termination of employment of any Transferring Supplier Personnel by the Supplier, Related Service Provider and/or Subcontractor in respect of the period up to the relevant transfer; and
 - (ii) any failure by the Supplier, Related Service Provider or Subcontractor to comply with its obligations under Regulations 13 and 14 of TUPE in respect of any Transferring Supplier Personnel.

- c) The Company shall indemnify and keep the Supplier (for itself and on behalf of any relevant Related Service Provider or Subcontractor) indemnified for and against all and any Losses suffered or incurred by the Supplier (directly or through an indemnity given to a Subcontractor or Related Service Provider), Related Service Provider or Subcontractor arising out of or in connection with:
- (i) any failure by the Company or new supplier to comply with its obligations under TUPE including under Regulation 13(4) of TUPE;
 - (ii) the employment and/or termination of employment of any Transferring Supplier Personnel by the Company or new supplier in respect of any period on or after the relevant transfer;
 - (iii) any claim for constructive dismissal and/or under Regulation 4(9) and/or 4(11) of TUPE by any Transferring Supplier Personnel or any person who would be a member of the Transferring Supplier Personnel but for an objection to transferring under Regulation 4(7) of TUPE in any case as a result of any actual or anticipatory breach of contract or detrimental change to working conditions in relation to such person by the Company or new supplier.

35 NON-SOLICITATION

- 35.1 For the term of this Agreement and for the period of 12 months thereafter, without the prior written consent of the other party, neither party, or its affiliates, shall either directly or indirectly solicit or entice away, or seek or attempt to entice away, from the employment of the other party any person employed, or any person who has been so employed in the preceding 9 months, by such other party in the provision or receipt of the Services. In the event that the Company is in breach of this Clause 35 then the Company shall pay to the Supplier by way of liquidated damages an amount equal to fifty percent (50%) of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant Party) of the person so employed or engaged plus any applicable recruitment fees for the replacement of such person. The parties hereby acknowledge and agree that the formula specified in this Clause 35 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged. This provision shall be without prejudice to the Supplier's ability to seek injunctive relief.

36 COUNTERPARTS

- 36.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.

37 GOVERNING LAW AND JURISDICTION

- 37.1 This Agreement, and any Dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed at all times in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

38 MODERN SLAVERY

- 38.1 The Supplier shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015, and have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance.

39 ANTI-FACILITATION OF TAX EVASION

- 39.1 The Supplier will not knowingly engage in any activity or conduct which would constitute or facilitate tax evasion (or any offence) whether in the UK or in any other jurisdictions, under the Criminal Finances Act 2017, and have and maintain in place throughout the term of this Agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with this Clause 38.

40 ANTI-BRIBERY AND ANTI-CORRUPTION

- 40.1 The Supplier shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements"), and have and maintain throughout the term of this Agreement its own policies and procedures to ensure compliance with the Relevant Requirements.

SCHEDULE 1. – SUPPLY OF EQUIPMENT

1 THE EQUIPMENT

- 1.1 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Agreement or have any contractual force.
- 1.2 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 1.3 If the Supplier cannot supply the Equipment ordered by the Company, the Supplier reserves the right to offer Equipment of equal quality at no extra cost. In such a case, if the Company does not wish to accept the alternative Equipment offered, it may cancel the Order and require the refund of any money paid to the Supplier in respect of that Order, including carriage charges. This shall be the sole remedy of the Company in these circumstances.
- 1.4 Where the Equipment are being supplied by a Related Service Provider , they will be supplied subject to any terms and conditions of sale and returns policy relating thereto by the relevant manufacturer and/or Related Service Provider .

2 PRICES

- 2.1 Prices for Equipment shall be quoted to the Company upon receipt of an Order for Equipment. Notwithstanding the Supplier's provision of a quote, prices for Equipment shall not be confirmed until such time as the manufacturer has confirmed acceptance of the Order at which point the price for the Equipment shall be established and the Order shall be irrevocable. For the avoidance of doubt, the Supplier's provision of a quote shall not be deemed acceptance of an Order by the Supplier.
- 2.2 Notwithstanding the foregoing, the Supplier reserves the right to increase its prices after providing the Company with a quote for the prices for Equipment due to an increase in its Related Service Provider 's price to the Supplier or an increase in direct costs to which the Supplier becomes subject (including without limit costs resulting from currency fluctuation) but the Supplier shall only increase its price by such level as is necessary to reflect such increases.
- 2.3 Unless otherwise stated, prices exclude any copyright levies, waste and environmental fees, and similar charges that by law or statute may or shall charge or collect upon resale.

3 DELIVERY

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

4 WARRANTIES

- 4.1 For Equipment supplied to the Company, the Supplier shall pass onto the Company to the extent that it is able to do so, the benefit of any standard warranty or guarantee that is provided to the end user of the Products by the manufacturer/Related Service Provider(s) ("OEM Warranty"). The Supplier's only liability will be limited by the terms set out in such OEM Warranty.

5 TITLE AND RISK

- 5.1 Risk in Equipment shall pass to the Company on delivery.
- 5.2 Title to Equipment shall only pass to the Company once the Supplier receives payment in full (in cleared funds) for them.
- 5.3 Until title to the Equipment has passed to the Company, the Company shall:

- a) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- b) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- c) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 15.1a); and
- d) give the Supplier such information relating to the Equipment as the Supplier may require from time to time.

5.4 The Supplier may recover Equipment in which title has not passed to the Company. The Company irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Company (including with vehicles), in order to satisfy itself that the Company is complying with the obligations in paragraph 5.3, and to recover any Equipment in which property has not passed to the Company.

6 CANCELLATION

6.1 Notwithstanding paragraph 1.4, once an Order for Equipment has been accepted by the Supplier, no Order may be cancelled by the Company except with the agreement in writing of the Supplier and on terms that the Company shall indemnify the Supplier in full against all reasonable losses, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

7 RETURN OF EQUIPMENT

- 7.1 All returns of Equipment can only be made and will only be accepted by the Supplier if they comply with this paragraph 7.
- 7.2 Subject to the provisions of this Schedule 1, Equipment may only be returned in accordance with the Supplier or Related Service Provider 's terms and conditions or returns policy.
- 7.3 Prior authorisation for the return of any Equipment must be obtained from the Supplier or Related Service Provider via such method as the Supplier may advise. Such returns authorisation shall be given at the Supplier's or Related Service Provider 's sole discretion. If the Equipment cannot be returned or replaced, the Supplier shall set this out in the relevant Order.
- 7.4 Equipment that are authorised for return must be returned by the Company in accordance with the applicable return instructions provided by the Supplier or Related Service Provider .
- 7.5 The Supplier or the Related Service Provider reserves the right to levy a reasonable administration charge in respect of returns.

SCHEDULE 2. MICROSOFT NCE (NEW COMMERCE EXPERIENCE) (CSP) AGREEMENT ADDITIONAL TERMS

1 NCE CSP MANAGED SERVICES

- 1.1 The Supplier is a reseller of Microsoft New Commerce Experience Cloud Solution Provider (“NCE CSP”) products (“NCE CSP Managed Services”). Where the Services referred to in the Order include the provision of NCE CSP Managed Services, the NCE CSP Managed Services shall be provided in accordance with and governed by the Order and this Schedule (which is hereinafter referred to as the “NCE CSP Managed Services Terms”).
- 1.2 Except as defined in these NCE CSP Managed Services Terms, capitalised terms shall have the meanings given to them in the Order and/or the Agreement (as the case may be).
- 1.3 For the avoidance of any doubt, in the event of a conflict between these NCE CSP Managed Services Terms and the Agreement, the NCE CSP Managed Services Terms shall prevail. In the event of a conflict with the terms of these NCE CSP Subscription Terms and a Statement of Work or Order, the provisions of the Statement of Work or Order shall take precedence over these NCE CSP Subscription Terms. For all other Services, the Agreement shall apply.

2 INTERPRETATION

The following definitions in this paragraph 2 apply in these NCE CSP Managed Services Terms.

“**Cap**”: is the total monthly volume of Microsoft services which the Company is permitted to use.

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

“**Minimum Users**”: the minimum users as provisioned from time to time.

“**Online Service**”: means any of the Microsoft-hosted online services subscribed to by Company under the Agreement, including (but not limited to) Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

“**Products**”: means the products as they relate to Microsoft products.

“**Subscription**”: the purchase of a Subscription Service.

“**Subscription Service**”: means a right to use the Product(s) for a defined term.

“**Third Party Distributor**”: the third party who sells the Product(s) to the Supplier.

3 SERVICE PROVISION

3.1 By placing an order with the Supplier, the Company:

- a) represents that any subscription commitments and requirements disclosed are complete and accurate in all respects;
- b) agrees to pay the Supplier for all orders it submits for Products and the NCE CSP Managed Services;
- c) agrees to the terms of the Agreement and the Order; and
- d) represents and warrants that the Company has accepted the Customer Agreement.

3.2 Once an order for a Subscription has been accepted by the Supplier:

- a) The Subscription period shall commence once the Subscription is made live by the Supplier and shall continue for term stated on the Order unless terminated in compliance with the Agreement, these NCE CSP Managed Services Terms and/or the applicable Order; and/or
- b) adjustments may only be made to increase the Minimum Users and not decrease below any current Minimum User provisioned as more fully set out in the Agreement, these NCE CSP Managed Services Terms and the Order. For the avoidance of any doubt, should the Company wish to have the ability to flex the number of users each month, there shall be an uplift in line with the same percentage as Microsoft (as amended from time to time) in pricing as set out in the relevant Order and or the Agreement and the Company's ability to flex the number of users shall only apply to such Subscriptions provided on a monthly term. Otherwise the Company may never decrease the number of users in any given month below the previous Minimum User count, except on the renewal of the Subscription where the Company must give the Supplier at least 4 weeks' written notice prior to the commencement of each Renewal Term to change the Minimum User count. Any reduction below 20% of the Minimum User count is subject to approval by the Supplier, and upon sufficient evidence provided by the Company as for the justification of the reduction.

4 COMPANY'S OBLIGATIONS

4.1 The Company agrees and acknowledges to adhere to the terms of the Customer Agreement which govern the use of the Subscription Services and the Online Services.

4.2 Supplier shall take reasonable steps to protect the Company's information, however the Company acknowledges that the Internet is not secure and accordingly that Supplier cannot absolutely guarantee the privacy of the Company's information despite all reasonable safeguards being put into place and maintained.

4.3 The Online Services are supplied subject to the condition that there will be no abuse or fraudulent use thereof. Abuse and fraudulent use of the Online Services shall include (without limitation):

- a) obtaining, or attempting to obtain, the Online Service by rearranging, tampering with, or making connection with any facilities of Supplier, or by any trick, scheme, false representation or false credit device, or by or through any other fraudulent means or devices whatsoever, with intent to avoid payment, in whole or in part, of the regular charges for the Online Services;
- b) attempting to, or actually obtaining, accessing, altering, or destroying the data files, programs, procedures and/or information of Supplier or of another Company of Supplier;
- c) using the Online Services in such a manner as to interfere unreasonably with the use of the Online Services by any other user or authorised person;
- d) the resale of the Online Services without Supplier's prior written approval.

4.4 The Company shall use the Online Services in accordance with the Acceptable Use Policy of the Supplier and in particular (but without limitation) the Company shall not:

- a) send any message, email or other communication which:
 - (i) is in breach of applicable laws;
 - (ii) may incite violence, sadism, cruelty or racial hatred;
 - (iii) may facilitate prostitution or paedophilia;
 - (iv) is pornographic, obscene, indecent, abusive, offensive or menacing.
- b) knowingly create and/or introduce any malware, virus, worm, Trojan horse or other destructive or contaminating program or advise any other party how to do so;
- c) invade the privacy of other users of the Online Services or the Internet, for example by sending unsolicited emails ("**spamming**") nor collect or transfer personal data on individuals without their consent;

4.5 The Company shall maintain confidentiality of its login names, passwords and other confidential information relating to the Company's access to the Online Services.

5 FEES

5.1 Fixed Term Subscriptions:

- a) Products sold under fixed term Subscriptions are sold for a term as specified in the Order. The Order shall specify if such Subscriptions are to be billed on a monthly or annual basis.

- b) Any subsequent adjustments to annual Subscriptions (e.g. adding users) made mid-billing cycle will be invoiced and paid at the time of placing the order.
- c) Any subsequent adjustments to monthly Subscriptions (e.g. adding users) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.

5.2 For all Consumption Subscriptions, the Company agrees and acknowledges that:

- a) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Order and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
- b) Consumption Subscriptions will be billed at the next billing cycle and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for an Online Service sold on a consumption basis may change during the subscription period;
- c) it shall pay all such usage and is responsible for monitoring its consumption needs;
- d) the Company further acknowledges and accepts that the Supplier may establish or install a technical lock or barrier (the "Barrier"), which prevents the Company from utilisation of a Product in excess of the Cap;
- e) for the avoidance of doubt, if, in spite of paragraph 5.2(d), the Company utilises a Product in excess of the Cap, the Company shall pay to the Supplier fees and other expenses in accordance with its actual use. Any dysfunction or non-use of the Barrier shall not release the Company from paying fees and costs in accordance with its actual utilisation of a Product. The Supplier has no responsibilities with regards to preventing the Company from utilisation in excess of the Cap.

5.3 Subject to paragraph 5.4 below, the Fees may increase on an annual basis with effect from each anniversary of the date of the Order in line with the percentage increase in the Retail Prices Index in the preceding 12-month period.

5.4 For the avoidance of doubt, the Supplier may increase any fees related to the Subscription Services in line with any increases imposed upon the Supplier by Microsoft and in line with the terms of the Customer Agreement.

5.5 The Supplier may change credit or payment terms for unfilled orders if, in the Supplier's reasonable opinion, the Company's financial condition, previous payment record, or relationship with the Supplier merits such change.

6 INTELLECTUAL PROPERTY

- 6.1 The Company acquires only such limited rights to use the Products as is explicitly described in the Customer Agreement. Any use by the Company of these rights beyond the scope permitted by the Customer Agreement shall constitute a material breach hereof.
- 6.2 The Supplier is not liable for defects in, or delays related to the Products.
- 6.3 For the avoidance of doubt, if a claim for infringement concerns the Product, the separate terms and conditions of the Customer Agreement shall apply and is a separate action between the Company and Microsoft.

7 LIMITATION OF LIABILITY

- 7.1 For the avoidance of doubt, the terms set out in the Customer Agreement govern the rights and responsibilities of the Company and Microsoft in relation to the use of the Subscription Services and Online Services and the Supplier excludes any and all liability in relation to the use of the Products.
- 7.2 Notwithstanding anything to the contrary in the Agreement, the Company shall indemnify the Supplier from and against any claims, including but not limited to claim for licence fees that directly or indirectly arises from the Company's use of the Subscription Services or reporting under the Agreement.

8 CANCELLATION

- 8.1 Subject to paragraph 8.2, where the Company has procured Products or Online Services from the Supplier, the Company may cancel the applicable order in line with the terms set out by Microsoft if the Company notifies the Supplier within seventy two hours (72) of placing the initial order for the applicable Microsoft Products or Online Services. For such notice to cancel to be effective, it must be received by the Supplier within the hours of 9am – 4pm (GMT) on a Business Day.
- 8.2 The Company acknowledges and accepts that any cancellation pursuant to paragraph 8.1 will only be accepted if submitted by the Supplier within Microsoft's designated cancellation period for the applicable Online Service or Product and is approved by Microsoft and/or the Third Party Distributor (if applicable) and is in accordance with any other requirements of Microsoft and/or Third Party Distributor (if applicable) at the time of cancellation. If cancellation is approved by Microsoft and/or Third Party Distributor, then the order will be cancelled.
- 8.3 Depending on the service or product being cancelled, if and to the extent any credit of the purchase price (in full or pro-rata) is issued by Microsoft or the Third Party Distributor (if applicable) to the Supplier, on receipt of the same, the Supplier will pass on any such

credit to the Company less any Microsoft and/or Third Party Distributor handling fee as a proportion of the value of any order submitted and approved after the designated period for the relevant Product or Online Service. The Supplier is not liable to the Company if Microsoft and/or Third Party Distributor do not issue a credit.

9 TERM & TERMINATION

- 9.1 The Company's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s), as more fully set out in paragraph 3.2 of this NCE CSP Managed Service Terms.
- 9.2 Subject to paragraph 3.2, Subscriptions for Products will automatically renew at the end of the applicable Subscription term for a term equal to the initial subscription term, unless the Company gives at least thirty (30) days' prior written notice in the case of monthly terms, and ninety (90) days' prior written notice in the case of annual or multi-annual terms, of non-renewal. Such notice to expire at the next renewal date. Unless otherwise specified in the applicable Order, the Company shall remain liable for any and all payments due in respect of the licences until the end of the respective subscription (and renewal) period.
- 9.3 Termination of the licences will not affect any other Services provided under these NCE CSP Managed Services Terms or the Agreement.
- 9.4 The Supplier shall not be liable whatsoever to the Company following any termination or suspension of the Subscription for legal, regulatory or any other reasons by Microsoft or the Third Party Distributor.
- 9.5 The Supplier may terminate the NCE CSP Managed Services, or if deemed appropriate by the Supplier suspend any relevant subscriptions, immediately on giving written notice to the Company if:
- a) payment of any amount due from the Company under these NCE CSP Managed Services Terms is overdue by ten (10) Business Days or more, provided that the Supplier has given the Company ten (10) days' written notice of such failure to pay; and/or
 - b) upon termination by Microsoft of the licence(s); and/or
 - c) in accordance with the Customer Agreement.
- 9.6 On termination of the Agreement for any reason:
- a) the Company shall pay all outstanding sums owing to the Supplier in accordance with Clause 16 of the Agreement;
 - b) all licences granted under the Agreement will terminate immediately except for fully-paid, perpetual licences;

- c) for metered Products billed periodically based on usage, the Company must immediately pay for unpaid usage as of the termination date; and
- d) if Microsoft is in breach and the Company is entitled, the Company will receive a credit for any Subscription Services fees, including amounts paid in advance for unused consumption for any usage period after the termination date.