

Managed Service Agreement

BACKGROUND

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

AGREED TERMS

1. INTERPRETATION

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

Acceptable Use Policy: the policy available at <https://www.bedroq.co.uk/terms-and-conditions/>.

Applicable Data Protection Laws: means:

- a) To the extent the UK Data Protection Legislation applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Applicable Laws: means:

- a) To the extent the UK Data Protection Legislation applies, the law of the United Kingdom or of a part of the United Kingdom.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.

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

Change Control Procedure: the procedures set out in Clause 9.

Change Request: request to change the Managed Services as set out in Clause 9.

Client: the client as identified in the Order Form.

Client Data: any information that is provided by the Client to the Supplier as part of the Client's use of the Managed Services.

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

Client Site: any premises used by the Client at which it receives the Managed Services.

Client Support Team: the individuals appointed by the Client from time to time who shall serve as the Supplier's primary contacts for the Supplier's activities under this Agreement.

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

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

Commencement Date: the date on which the relevant Service Item becomes available.

Commissioner: the Information Commissioner (see section 114, DPA 2018).

Confidential Information: all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Managed Services (together, its Representatives) to the other Party and that Party's **Representatives** in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

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

Dispute Resolution Procedure: the procedure described in Clause 25.

Effective Date: the date of this Agreement.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Expenses: the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier or its subcontractors in providing the Managed Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Client for the Managed Services.

Fees: the fees payable to the Supplier, as described in in the applicable Order Form or under a Change Request.

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

Goods: the goods (or any part of them), as set out in the Order Form.

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

Initial Term: the initial term which runs from the Commencement Date and as more fully set out in the Order Form.

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

Item Notice Period: shall mean the minimum notice required to expire before the end of a Minimum Term or the Term Extension (as applicable), to remove a Service Item. The Item Notice Period is set out in the Order Form.

Maintenance: any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Managed Services, as well as any other support or training services provided to the Client under this Agreement, all as described in the Managed Service Specification.

Managed Services: the collection of Service Items, ordered by the Client using an Order Form, described in the Managed Service Specification (including any support arrangements and Maintenance) to be performed by the Supplier in accordance with this Agreement.

Managed Service Specification: the specification for each of the Managed Services as described in the schedule to the relevant Order Form.

Manufacturer: the manufacturer of the Goods.

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

Minimum Term: the minimum term of a Service Item. The initial Minimum Term is set out in the Order Form.

Normal Business Hours: 9.00 am to 5.00 pm local UK time on Business Days.

Order Form: the order form which contains details of the Managed Services, Quantities and other required information and which shall be sent by the Supplier to the Client under separate

cover. Service Items specified on the first and subsequent Order Forms combine to make up the Managed Services.

Purpose: the purposes for which the Client Personal Data is processed, as set out in the Data Processing schedule, located at <https://www.bedroq.co.uk/terms-and-conditions/> or updated and agreed in writing by the Client and Supplier.

Quantities: shall have the meaning ascribed to it in the Order Form.

Service Item: the individual services listed in the Order Form(s) with their associated Quantities and other attributes including but not limited to Minimum Term.

Service Level Arrangements: the service level arrangements set out in the relevant Managed Service Specification.

Software: any software used by the Supplier to provide the Managed Services to the Client whether owned by a third party (Third-Party Software), by the Client (Client Software) or by the Supplier (Supplier Software).

Supplier: BEDROQ LIMITED incorporated and registered in England and Wales with company number 11859968 whose registered office is at 22 Western Avenue, Poole BH13 7AN.

Supplier Support Team: the individuals appointed by the Supplier from time to time who shall serve as the Client's primary contacts for the Client's activities under this Agreement.

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

Term Extension: the increment by which the Minimum Term is automatically extended each time the end of a Minimum Term is reached. The increment is defined in the Order Form. If the Term Extension is not specified in the Order Form it will be deemed to be every 12 months from the end of the Minimum Term.

Termination Compensation Fee: means all remaining Fees due to the end of the Minimum Term or the Extended Term (as applicable) for all remaining Service Items.

Third Party Licence: any licence relating to Third Party Software, including the Customer Agreement.

Third Party Software: any code or software programs written or provided by Microsoft ® or other third parties which are used by the Client.

Third Party Termination Costs: means all costs and expenses which have been or may be incurred or are owing or will be owing to such third parties upon a termination event as set out in Clause 14.

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

UK GDPR: the EU GDPR as it applies in the UK after the end of the transition period (as set out in Article 126 of the EU-UK Withdrawal Agreement) by virtue of section 3 of the European Union (Withdrawal) Act 2018.

Virus: without limitation, any malicious code, Trojans, worms and viruses, lock, authorisation key or similar device that impairs or could impair the operation of the Software and or the Managed Services.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes e-mail.
- 1.9 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 References to Clauses and schedules are to the Clauses and schedules of this Agreement. References to paragraphs are to paragraphs of the relevant schedule.
- 1.11 Any document attached by url link to this Agreement shall be deemed a schedule to this Agreement.
- 1.12 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.13 In the event of any conflict or inconsistency between the Clauses and the schedules to this Agreement (including any changes to the schedules or additions or variations to the schedules), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
 - (a) each signed Order Form;
 - (b) the schedules (including any future or updated schedules, as applicable);
 - (c) the terms of any Third Party Licence (as applicable and to the extent it applies to the Services pertaining to such Third Party Licence); and

(d) the Clauses.

2 SERVICE PROVISION

- 2.1 The Supplier will provide the Managed Services with all due care, skill and ability.
- 2.2 The Supplier shall provide the Managed Services in accordance with the Service Level Arrangements as stated in the Managed Service Specification.
- 2.3 Supplier does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Whilst the Supplier will use reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, the Supplier disclaims any and all liability resulting from or related to such events.
- 2.4 The Client confirms that the Supplier may employ sub-contractors without seeking the prior consent of the Client. Notwithstanding the foregoing, the Supplier shall at all times be responsible for and liable in respect of the performance of all obligations under this Agreement, whether such obligations are performed by the Supplier itself, or any sub-contractor engaged by the Supplier.
- 2.5 The Client shall not store, distribute or transmit any material through the Managed Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images; and/or
 - (d) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities.
- 2.6 The Client shall remain responsible for the use of the Managed Services under its control, including any use by third parties that Client has authorised to use the Managed Services.
- 2.7 The Client must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Client by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier will work with the Client to alleviate the situation as quickly as possible. The Parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 2.8 The Client shall not provide the Managed Services to third parties unless specifically authorised by the Supplier.

2.9 The Client acknowledges that the Supplier may at any time, with the Client's prior written approval, incorporate licence management software into elements of the Managed Services for the purposes of ensuring that licence rights are not exceeded, where the Supplier has a licencing responsibility for software installed on the Client server. Any such costs relating to such incorporation shall be at the Client's sole cost and expense.

2.10 The Supplier reserves the right to:

- (a) modify the Supplier's System, its network, system configurations or routing configuration; or
- (b) modify or replace any Hardware or Software in its network or in equipment used to deliver any Managed Service over its network,

provided that this has no adverse effect on the Supplier's obligations or performance under this Agreement and its provision of the Managed Services or the Service Level Arrangements. If such changes will have an adverse effect, the Supplier shall notify the Client and the Parties shall follow the Change Control Procedure.

3 CLIENT DATA

3.1 The Supplier shall promptly notify the Client in writing of any loss or damage to the Client Data. In the event of any loss or damage to Client Data, the Supplier shall use commercially reasonable endeavours to restore the lost or damaged Client Data from the latest backup of such Client Data. Subject to Clause 2.4, the Supplier shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Client Data caused by any third party.

3.2 For the purposes of this Clause 3, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK Data Protection Legislation.

3.3 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 3 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.

3.4 The Parties have determined that, for the purposes of Applicable Data Protection Laws, the Supplier shall process the personal data in accordance with the Purpose, as a processor on behalf of the Client.

3.5 Without prejudice to the generality of Clause 3.3, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to the Supplier for the duration and purposes of this Agreement.

3.6 In relation to the Client Personal Data, the Purpose sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject. For the avoidance of doubt Client Personal Data shall not include any special categories of data as identified by Applicable Data Protection Laws unless separately identified by the Client and agreed to by the Supplier in writing.

3.7 Without prejudice to the generality of Clause 3.3 the Supplier shall, in relation to Client Personal Data:

- (a) process that Client Personal Data only on the documented instructions of the Client, unless the Supplier is required by Applicable Laws to otherwise process that Client Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Client Personal Data, the Supplier shall notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client on important grounds of public interest. The Supplier shall inform the Client if, in the opinion of the Supplier, the instructions of the Client infringe Applicable Data Protection Laws;
- (b) implement appropriate the technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, which the Client has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that any personnel engaged and authorised by the Supplier to process Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Client insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Client's cost and written request, in responding to any request from a data subject and in ensuring the Client's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Client without undue delay on becoming aware of a personal data breach involving the Client Personal Data;
- (f) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of the Agreement unless the Supplier is required by Applicable Laws to continue to process that Client Personal Data. For the purposes of this Clause 3.7(f) Client Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this Clause 3 and allow for reasonable audits by the Client or the Client's designated auditor, for this purpose, on reasonable written notice.

3.8 The Client hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Client Personal Data, provided that the Supplier:

- i shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this Clause 3;
 - ii shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - iii shall inform the Client of any intended changes concerning the addition or replacement of the processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Laws, the Client shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Client Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Client shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK Data Protection Legislation applies to the transfer).

4 SUPPLIER'S OBLIGATIONS AND PROVISION OF GOODS

- 4.1 The Supplier warrants that the Managed Services will be performed with all reasonable skill and care and that it will be provided in accordance with the Managed Service Specification and the terms and conditions of this Agreement.
- 4.2 The warranty in Clause 4.1 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to the Supplier's instructions.
- 4.3 If the Managed Services do not conform with the warranty in Clause 4.1, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.
- 4.4 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Managed Services will be uninterrupted or error-free.
- 4.5 This Agreement shall not prevent the Supplier from entering into similar Agreements with third parties, or from commissioning, engaging, independently developing, using, selling or licensing materials, products or services that are similar to those provided under this Agreement.
- 4.6 This Agreement shall not prevent the Client from entering into similar Agreements with third parties, or from commissioning, engaging, independently developing, using, selling or licensing materials, products or services that are similar to those provided by the Supplier under this Agreement.
- 4.7 The Supplier shall:

- (a) staff the Supplier support desk with a team of skilled individuals;
- (b) maintain a team skilled in the platform and with knowledge of the code developed to deliver the solution;
- (c) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;
- (d) undertake a regular account review, to discuss the Client's service needs and ensure that the Agreement is in alignment with its needs;
- (e) provide continuously available online call logging, call management and progress monitoring;
- (f) use commercially reasonable endeavours to follow the instructions of the Client and will remain courteous during any communications with Client personnel;
- (g) provide the Client with all necessary co-operation in relation to this Agreement;
- (h) use reasonable endeavours to ensure continuity of its personnel assigned to this Agreement; and
- (i) carry out all other Supplier responsibilities set out in this Agreement or in any of the schedules in a timely and efficient manner.

4.8 The Supplier shall be under no obligation to provide the Managed Services to the Client in the following circumstances:

- (a) If there is a change of law applicable to either the Supplier or the Client (Change of Law) which affects the provision of the Managed Services. In the event of such Change of Law which affects the provision of the Managed Services, the Supplier may issue a Change Request to the Client (including but not limited to, any changes to pricing) if it deems that it is able to continue the provision of the Managed Services under such Change of Law;
- (b) unauthorised use of the Software by the Client or use otherwise than in accordance with this Agreement;
- (c) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing or as set out in the Managed Service Specification or in the Order Form;
- (d) providing any other services not covered herein; and
- (e) training in use of any upgrades; and.
- (f) providing the Managed Services to the Client where such support have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client pursuant to the call for technical support.

4.9 The Supplier shall supply the Goods as set out in the applicable Managed Service Specification and/or the Order Form.

- 4.10 The Supplier shall endeavour to procure the delivery of the Goods to the delivery location as advised by the Client (Delivery Location) on the relevant delivery date (such dates to be agreed between the Parties in advance) (Delivery Date).
- 4.11 Delivery is completed on the completion of loading of the Goods at the Delivery Location.
- 4.12 Delivery Dates are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of any Goods that is caused by:
- (a) A delay from the Manufacturer;
 - (b) Force Majeure Event (as defined in Clause 16); or
 - (c) the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.13 If the Supplier fails to deliver Goods by the relevant Delivery Date after being given a reasonable opportunity to remedy such delay and such delay is not due to a third party, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.14 If 10 Business Days after the day on which the Supplier attempted to make delivery of Goods the Client has not taken delivery of those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Goods, or charge the Client for any shortfall below the price of the Goods.
- 4.15 The Supplier may deliver Goods by instalments, which shall be invoiced and paid for separately. The Client may not cancel an instalment because of any delay in delivery or defect in another instalment.

5 SECURITY

- 5.1 The Supplier shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to any and all Managed Services, the Supplier's System and related networks or resources and the Client Data, in accordance with Good Industry Practice.
- 5.2 Each Party shall promptly inform the other if it suspects or uncovers any breach of security, and shall use all commercially reasonable endeavours to promptly remedy such breach.

6 CLIENT'S OBLIGATIONS

- 6.1 To the extent that the Supplier requires access to the Client's Operating Environment to perform the Managed Services, the Client shall provide such access during Normal Business Hours and to provide a suitable work environment to enable the Supplier to perform such Managed Services subject to the Supplier complying with such internal policies and procedures of the Client (including those relating to security and health and safety) as may be notified to the Supplier in advance and in writing.

6.2 The Client shall:

- (a) use the Managed Services only for lawful purposes and in accordance with this Agreement;
- (b) keep secure from third parties any passwords issued to the Client by the Supplier;
- (c) fully Virus-check all data supplied to the Supplier pursuant to this Agreement;
- (d) make Client's Operating Environment and Client-side Equipment, required to provide the Managed Services, accessible to the Supplier's support staff, enable logons or passwords required for such support staff (who will have their own logons); and provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
- (e) permit the Supplier to install the current version of software required to provide the Managed Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
- (f) provide notice of intention to change applicable Client-side Equipment or Client Operating Environment or data-feeds that will directly impact the Managed Services;
- (g) comply with the Acceptable Use Policy, provided that the Supplier gives not less than twenty (20) business days written notice to the Client of additions and changes to such Acceptable Use Policies. For the avoidance of doubt, if the Client is in breach of any terms found within the Acceptable Use Policy, the Supplier shall have the right to suspend the Managed Services without any liability to the Client as more fully set out in Clauses 14 and 15;
- (h) be a bona fide licensed user of all Third Party Software and of the Client's Software used by it;
- (i) provide all information and make available all resources as reasonably requested by Supplier in the execution of its obligations under this Agreement;
- (j) use best efforts to follow the instructions of Supplier support personnel and will remain courteous during any communications with Supplier personnel;
- (k) gather all relevant information prior to requesting assistance including detailed fault description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a fault should be included such as network configuration details;
- (l) provide the Supplier with access to the Client-side Equipment or Client Operating Environment, as applicable via a secure broadband link operating at the industry accepted bandwidth for the purposes of remote diagnostics;
- (m) agree that if, in the course of performing the Managed Services, it is necessary or desirable for the Supplier to access or use any Client-side Equipment, Client Software or Client Data (or which is in the possession of the Client) then it shall where it is able to under the terms of its existing licences grant to Supplier a non exclusive, royalty free licence, during the term of the Agreement to use the same solely for the purpose of delivering the Managed Services;

- (n) provide the Supplier with:
 - i all necessary co-operation in relation to this Agreement; and
 - ii all necessary access to such information as may be required by the Supplier,

in order to render the Managed Services, including Client Data, security access information and software interfaces, to the Client's other business applications;
- (o) provide such personnel assistance, including the Client Support Team and other Client personnel, as may be reasonably requested by the Supplier from time to time;
- (p) comply with all applicable laws and regulations with respect to its activities under this Agreement, including those set out in Clause 18; and
- (q) carry out all other Client responsibilities set out in this Agreement or in any of the schedules in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the Parties, the Supplier may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary;
- (r) in respect of any Microsoft funded services, sign and deliver the Proof of Execution (POE) on the last day of scheduled work;
- (s) where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite or Office365) the Supplier will be assigned to the cloud subscription/s as the Claiming Partner of Record and Digital Partner of Record for a minimum of twelve (12) months from project completion date; and
- (t) maintain and allow the Supplier continuous global admin access to the Client's relevant Microsoft cloud services portals for the duration of the Agreement.

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

6.4 The Client agrees and acknowledges the terms of the applicable Third Party Licences and that such terms shall form part of this Agreement. For the avoidance of doubt, in the event the applicable Third Party Licences are not applicable to the Services being received or delivered by the Supplier to the Client under this Agreement, such agreements shall not apply.

7 WARRANTIES

7.1 The Client warrants that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Client and that any person representing the Client who issues any orders, requests or any Change Requests are authorised by the Client to do so on its behalf;
- (b) it has the authority to grant any rights to be granted to the Supplier under this Agreement, including the right to provide the Software and Hardware to the Supplier as indicated in this Agreement and for the same to be used in the provision of the Managed Services and otherwise in connection with this Agreement;
- (c) it will comply with and use the Managed Services in accordance with the terms of this Agreement and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws;
- (d) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to the Supplier, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement, including any third-Party licences and consents in respect of any Client Software;
- (e) it has conducted appropriate due diligence on the Supplier and the Managed Services to ensure it meets the Client's requirements; and
- (f) the Supplier's use in the provision of the Managed Services or otherwise in connection with this Agreement of any third-party materials, including any Hardware or Software supplied by the Client to the Supplier for use in the provision of the Managed Services or otherwise in connection with this Agreement, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.

7.2 The Supplier warrants and represents that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- (b) it owns or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement including for the Client's use and receipt of the Managed Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- (c) it will comply with the requirements under Clause 18 of this Agreement; and
- (d) the Client's use of any Supplier Software shall not cause the Client to infringe the rights, including any Intellectual Property Rights, of any third party.

7.3 The Supplier shall use reasonable endeavours to pass through any warranties from the Manufacturer that it is able to for the benefit of the Client including a warranty period which shall be notified to the Client, if applicable.

7.4 Except for any warranties as set out in Clause 7.3, the Goods are provided on an "as is" basis, and Client's use of the Goods is at its own risk. Supplier does not make, and hereby

disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.

- 7.5 The Supplier shall not be liable for any faults with the Goods' if:
- (a) the defect arises because the Client failed to follow the Supplier's and/or its Manufacturer's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (b) the Client alters or repairs such Goods without the written consent of the Supplier;
 - (c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (d) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.6 The Supplier's only liability to the Client if the Goods fail to comply is as set out in Clause 7.3.
- 7.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- 7.8 The terms of the Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

8 CHARGES AND PAYMENT

- 8.1 The Client shall pay the Fees for the Managed Services and Goods (including any Third Party Software fees as applicable) in accordance with the Order Form and this Clause 8
- 8.2 Any set up costs shall be set out in the applicable Order Form payable in accordance with this Agreement. Setup costs will be invoiced when the Order Form is received by the Supplier.
- 8.3 Service Items shall be invoiced quarterly in advance at the Quantities detailed in the Order Form(s) and payable in accordance with this Clause 8.
- 8.4 Where a Service Item is indicated to be "Consumption" in the Order Form, the variance between the Quantity in the Order Form and the actual usage will be invoiced monthly in arrears.
- 8.5 The Client shall pay any and all Expenses to the extent these are captured in the Order Form or as agreed between the Parties.
- 8.6 All amounts and Fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.7 Each invoice is due and the undisputed portion payable thirty (30) days after the invoice is received by the Client. The Supplier be entitled to charge interest on all undisputed amounts, such interest to accrue on any overdue amounts at the rate of two (2) % over the

base lending rate of the Lloyds Bank commencing on the due date and continuing until fully paid, whether before or after the judgment. The Parties shall follow the Dispute Resolution Procedure to resolve disputed portions of invoices.

- 8.8 On each anniversary of the signing of the Agreement, the Supplier may amend the Fees, in line with the percentage increase in the Consumer Price Index in the preceding twelve (12) month period plus 2% and shall give the Client at least (ninety) 90 days written notice of any such amendment. For the avoidance of doubt, the Supplier may increase any Third Party Software fee or any third party costs at any time in line with any increases imposed upon the Supplier by such third party.
- 8.9 The Client shall pay all amounts due under the Agreement in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Client.

9 CHANGE CONTROL

- 9.1 In the event either Party wishes to change minor components of the Managed Services, it shall raise a request through either the Supplier's portal or by email, telephone or Supplier's service desk, details of which shall be set out in the Managed Service Specification a The Client warrants that any of its representatives who effects such a request has the legal authority to do so on the Client's behalf and that the Client shall be bound by such requests.
- 9.2 If either Party wishes to materially change the scope of the Managed Services it shall submit details of the requested change to the other in writing.
- 9.3 If either Party requests a change to the scope or execution of the Managed Services, the Supplier shall, within a reasonable time, provide a written estimate to the Client of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Fees arising from the change; and
 - (c) any other impact of the change on the terms of this Agreement.
- 9.4 If the Parties agree to proceed with the change to the scope of the Managed Services, they shall execute an Order Form to that effect.

10 SERVICE REVIEW AND GOVERNANCE

- 10.1 The Client and the Supplier shall have regular meetings (in person or by telephone, as agreed) to monitor and review the performance of this Agreement, to discuss any changes proposed in accordance with Clause 9 and to discuss the Service Level Arrangements. These meetings shall be minuted by the Supplier and copies of those minutes shall be circulated to, and approved by, both Parties.
- 10.2 Before each meeting, the Client shall notify the Supplier, and vice versa, of any problems relating to the provision of the Managed Services for discussion at the meeting. At each such meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan within a reasonable timeframe,

the matter shall be resolved in accordance with the Dispute Resolution Procedure.
Progress in implementing the plan shall be included in the agenda for the next meeting.

11 PROPRIETARY RIGHTS, TITLE AND RISK

- 11.1 The Supplier and its licensors shall retain ownership of all Supplier Software and all general IPR and know how gained during the provision of the Managed Services. The Client and its licensors shall retain ownership of all Intellectual Property Rights in the Client Data.
- 11.2 The Supplier grants the Client or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to use the Supplier Software for the purpose of receiving and using the Managed Services in the Client's business during the term of the Agreement.
- 11.3 The Client grants the Supplier and its subcontractors a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Data for the term of the Agreement for the purpose of providing the Managed Services to the Client in accordance with the Agreement.
- 11.4 Risk in Goods shall pass to the Client on completion of loading the Goods at the Delivery Location.
- 11.5 Title to Goods shall only pass to the Client once the Supplier receives payment in full (in cash or cleared funds) for them.
- 11.6 Until title to the Goods has passed to the Client, the Client shall:
- (a) store the Goods separately from all other goods held by the Client so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 14.1(b); and
 - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 11.7 The Supplier may recover Goods in which title has not passed to the Client. The Client irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Client (including with vehicles), in order to satisfy itself that the Client is complying with the obligations in Clause 11.6, and to recover any Goods in which property has not passed to the Client.
- 11.8 The Supplier may at any time after delivery elect to transfer title in the Goods to the Client, in which case the Client shall immediately pay for such Goods.

12 CONFIDENTIALITY

- 12.1 The term "Confidential Information" does not include any information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this Clause);
 - (b) was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;
 - (c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving Party's knowledge, is not bound by a confidentiality Agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;
 - (d) was known to the receiving Party before the information was disclosed to it by the disclosing Party;
 - (e) the Parties agree in writing is not confidential or may be disclosed; or
 - (f) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 12.2 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement (Permitted Purpose); or
 - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause.
- 12.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.4 The Client acknowledges that the Supplier's Confidential Information includes any designs, plans, software or other materials created by the Supplier in connection with the Managed Services and the Client agrees not to make use of any such material for any purpose other than receipt of the Managed Services from the Supplier.
- 12.5 The Supplier acknowledges that the Client Data is the Confidential Information of the Client.
- 12.6 A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this Clause.
- 12.7 A Party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent

jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible.

- 12.8 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.
- 12.9 The provisions of this Clause 12 shall continue to apply for three (3) years after termination of this Agreement.

13 LIMITATION OF LIABILITY

- 13.1 This Clause 13 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:
- (a) any breach of this Agreement; and
 - (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 13.2 Except as expressly and specifically provided in this Agreement:
- (a) the Client assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Managed Services, or any actions taken by the Supplier at the Client's direction; and
 - (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 13.3 Nothing in this Agreement excludes or limits either Party's liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any other liability which cannot lawfully be excluded or limited.
- 13.4 Subject to Clause 13.3, the Service Level Arrangements state the Client's full and exclusive right and remedy, and the Supplier's only obligation and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.
- 13.5 Subject to Clause 13.3 and Clause 13.4:
- (a) neither Party shall be liable to the other in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or pure economic loss, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and

(b) the Parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to one hundred percent (100%) of the price paid for the Managed Services during the twelve (12) months preceding the date on which the claim arose. For the avoidance of doubt, in the event the Termination Compensation Fee is larger in value to the limits imposed in this Clause 13.5(b), the Client's liability shall be limited to the greater of: (1) the Termination Compensation Fee; or (2) the limits imposed in this Clause 13.5(b).

13.6 The Client shall indemnify the Supplier from and against any losses, damages, costs (including legal fees) and expenses and any other liabilities suffered, incurred by or awarded against the Supplier as a result of any breach by the Client of the terms of any Third Party Licences and which indemnity shall not be subject to the exclusions of liability in Clause 13.5 (a) and (b).

14 TERM AND TERMINATION

14.1 This Agreement shall continue indefinitely unless terminated immediately due to:

- (a) the other Party breaches any of the terms of clause 12 or clause 18;
- (b) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (c) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.2 The Minimum Term shall automatically be extended by a Term Extension unless the Client provides the Item Notice Period.

14.3 Each Party may immediately terminate a Service Item prior to the Item Notice Period, if

the other Party commits a material breach this Agreement or the Acceptable Use Policy (including, without limitation breach of any payment obligations) and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so.

14.4 In the event the Supplier terminates a Service Item(s) or the Agreement under Clauses 14.1 and 14.3, the Client shall immediately pay the Termination Compensation Fee for all affected Service Items. The Supplier may also terminate all other Service Items if the Client breaches Clause 14.3.

In the event the Client terminates the Agreement under Clause 14.1, all Service Items shall terminate immediately. In the event the Client terminates a Service Item, only that applicable Service Item which is subject to the breach may be terminated. This Agreement shall continue to apply to all other ongoing Service Items and such termination shall not affect all other ongoing Managed Services.

14.5 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

- 14.6 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 14.7 On termination of this Agreement for any reason:
- (a) the Supplier shall immediately cease provision of the Managed Services;
 - (b) the Client shall pay any and all outstanding invoices, any Termination Compensation Fee (if applicable) and all Third Party Termination Costs; and
 - (c) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.
- 14.8 If a Party is required by any law, regulation, or government or regulatory body (Regulatory Requirement) to retain any documents or materials which it would otherwise be obliged to return or destroy, it shall notify the other Party in writing of such retention, giving details of the documents or materials that it must retain. Clause 12 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.
- 14.9 For the purposes of this clause 14.2 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
- (a) a substantial portion of this Agreement; or
 - (b) any of the obligations set out in clauses 2.5, 6.2(a, g, h) and 6.3
- over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.
- 14.10 The Supplier may treat the Client's breach of any Third Party Licence as a material breach of the Agreement.

15 SUSPENSION OF THE MANAGED SERVICES

- 15.1 The Supplier may at its sole discretion upon giving reasonable notice to the Client either orally (confirming such notification in writing) or in writing elect to suspend immediately the provision of the Managed Services until further notice where there is an emergency event, including but not limited to:
- (a) breach of the terms of the Acceptable Use Policy;
 - (b) any forms of malware or viruses which threaten the Client's environment;
 - (c) the Supplier or its subcontractors needs to carry out any emergency maintenance service to any of Client-side Equipment in its possession or under its control or the Supplier's own equipment necessary to provide the Managed Services in which event the Supplier shall use all reasonable endeavours to ensure there is minimum disruption to the Managed Services;

- (d) the Supplier or its subcontractors reasonably suspects that the Managed Services are being used fraudulently or otherwise unlawfully; or
 - (e) the Supplier is obliged to comply with an order, instruction or request of government, an emergency services organisation or other competent administrative or regulatory authority.
- 15.2 Any exercise by the Supplier of its right of suspension in respect of an event referred to in this Clause 15 shall not cause the Supplier to be liable for any delays or disruptions to the Managed Services.
- 15.3 The Supplier shall not be liable to the Client for any charges incurred by the Client for the use of other services whether provided by the Supplier or any other person during any period of unavailability referred to in Clause 15.1.

16 FORCE MAJEURE

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

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

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

16.2 For the avoidance of doubt any event occurring as a result of Brexit (as defined in Clause 27) shall not be deemed a Force Majeure Event and shall be dealt with in accordance with Clause 27.

17 AUDIT

17.1 For the term of this Agreement, and for a period of two (2) years from termination or expiry of this Agreement, the Supplier shall maintain full and accurate records, in an agreed form, of all charges, prices, costs and expenses associated with and invoiced in respect of the Managed Services and all processing of data under this Agreement.

18 ANTI-BRIBERY AND MODERN SLAVERY

18.1 The Supplier shall:

- (a) comply with all applicable laws, regulations and sanctions relating to the Client's Modern Slavery and Human Trafficking Policy (as provided by the Client to the Supplier in advance of the commencement of the Managed Services);
 - (b) comply will anti-bribery and anti-corruption, including the Bribery Act 2010 (Relevant Requirements);
 - (c) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement.
- 18.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Agreement does so only on the basis of a written contract that imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 18 (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Client for any breach by such persons of any of the Relevant Terms.
- 18.3 For the purpose of this Clause 18, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6 (5) and (6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 18 a person associated with the Supplier includes any subcontractor of the Supplier.

19 WAIVER

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

20 SEVERANCE

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

21 ENTIRE AGREEMENT AND AMENDMENT

- 21.1 This Agreement constitutes the entire Agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and Agreements between them relating to its subject matter.

- 21.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.3 Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.
- 21.4 No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

22 NO PARTNERSHIP OR AGENCY

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

23 THIRD-PARTY RIGHTS

- 23.1 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, except for Microsoft and any third party licensors who may directly enforce the terms of the Microsoft Customer Agreement and/or other Third Party Licence as applicable, but this does not affect any right or remedy of a third party that exists or is available apart from the Act. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

24 NOTICES

- 24.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other Party's main fax number.
- 24.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or if sent by fax, at 9.00 am on the next Business Day after successful transmission, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 24.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall not include e-mail.

25 DISPUTE RESOLUTION

- 25.1 If a dispute arises under this Agreement (Dispute), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the

other Party describing the Dispute and requesting that it is resolved under this dispute resolution process (Dispute Notice).

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

26 EXPORT

- 26.1 Each Party undertakes to strictly comply with any applicable laws and regulations, national or international, relating to security trade/ export control when pursuing its activities under the Agreement. Neither Party shall (nor require a Party to, unless otherwise agreed) export, directly or indirectly, any technical data acquired from the other Party under the Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations, including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 26.2 Each Party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - (b) if requested, to provide the other Party with any reasonable assistance, at the reasonable cost of the other Party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any export control laws.

27 BREXIT

- 27.1 If, as a result of the UK ceasing to be a member of the European Union (Brexit), the Client suffers a material adverse impact including a new requirement to comply with an existing law or an existing law ceases to apply to the Client, the imposition of, or change to, a duty,

substantively higher tax or levy imposed on the Managed Services, the loss of, or change to or the imposition of a new requirement for any licence or consent required by the Client to perform this Agreement, or any unforeseeable change to the business or economic environment in which the Client operates which could render it economically or operationally unviable to continue with the Managed Services (together a "Brexit Event") the Client shall be entitled to serve notice on the Supplier requiring them to enter into negotiations in good faith with the Client regarding appropriate amendments to the Agreement.

- 27.2 If, after the expiry of 90 days from the date that notice is served pursuant to clause 27.1 amendments to the satisfaction of the Parties are not agreed, the Client shall be entitled to terminate the Agreement with immediate effect based on a Termination Compensation Fee payable to the Supplier. For the avoidance of doubt, the Client shall immediately pay for any and all outstanding invoices and Termination Compensation Fee up to the date of such termination and prior to such a Brexit Event from occurring.

28 NON-SOLICITATION

- 28.1 It is not intended that any staff be transferred from the Supplier to the Client or from the Client to the Supplier pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the Regulations).
- 28.2 Neither Party shall solicit the other Party's staff or contractors who have been employed or engaged in the Managed Services or the performance of this Agreement during the lifetime of this Agreement and for a period of twelve (12) months thereafter. For the purposes of this clause 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, sub contractor or independent contractor.
- 28.3 In the event that either Party is in breach of Clause 28.2 above then the Party in breach shall pay to the other by way of liquidated damages an amount equal to a sum equal to one year's basic salary or the annual fee that was payable to that employee plus recruitment costs incurred by the non-breaching Party in replacing such person. The Parties agree that such sums are a genuine pre-estimate of the loss likely to be suffered by the other Party. Payment of any such sums shall not prejudice the Parties right to seek other legal remedies such as injunctive relief.

29 GOVERNING LAW AND JURISDICTION

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

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