




KRATOS IT

**Master Services
Agreement**

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BACKGROUND

- (A) The Supplier has developed and will provide the Services and Goods, as applicable (as defined below).
- (B) The Client wishes to use the Supplier's Services and/or Goods in its business operations.
- (C) The Supplier has agreed to provide, and the Client has agreed to take and pay for, the Services and/or Goods, 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: means any acceptable use policy set out in the Statement of Work or as otherwise notified by the Supplier to the Client and as amended from time to time.

Additional Usage: means any additional use of the Third Party Services and/or Subscription Services in excess of the Minimum Commitment.

Agreement: means the terms and conditions in this Agreement (including the Managed Services Terms, the Professional Services Terms, the NCE Subscription Terms and the Supply of Goods Terms) along with the Statement of Work(s), any quotes and any other documents agreed between the Parties in writing.

Applicable Data Protection Laws: means:

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

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

Assumptions: has the meaning given in Clause 7.5.

Authorised Representative: means the person nominated by each Party in accordance with this Agreement.

Authorised User: means any individual who is entitled to use of the Third Party Services and/or Subscription Services named to the Supplier as a user by the Client.

Background Materials: means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by the Supplier which may have been created outside the scope, or

independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

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

Business Systems: the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Client or any of its agents or contractors.

Change Request: means any request to alter the Services pursuant to this Agreement as set out in Clause 14.

Client: the Client as identified in the Statement of Work (as applicable).

Client Data: any information that is provided by the Client to the Supplier as part of the Client's use of the Services, including any information derived from such information.

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: means the locations where the Services are provided as identified in the Statement of Work.

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 Services.

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

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

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

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

Customer Agreement: the Microsoft customer agreement, which is a direct agreement between the 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 (any such updates shall continue to form part of the Customer Agreement).

Deliverable: means all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: means, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Designated User: means any user of the Services named to the Supplier as a user by the Client.

Dispute Resolution Procedure: the procedure described in Clause 28.

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

Fees: the fees payable to the Supplier, as described in the Statement of Work or as otherwise agreed in writing as may be varied from time to time pursuant to the terms of this Agreement.

Force Majeure: has the meaning given in Clause 19.

Goods: the goods to be provided as part of the Services (or any part of them), as set out in the Statement of Work in the relevant section or as otherwise agreed in writing between the Parties.

Good Industry Practice: the standards of a skilled and experienced provider of services similar or identical to the applicable services, having regard to factors such as the nature and size of the parties, the type of service, the service levels, the term, the pricing structure and any other relevant factors.

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

Initial Term: means the period commencing on the Commencement Date or the Services Commencement Date (as the case may be) and ending on the date twelve (12) months thereafter unless otherwise specified in the Statement of Work. For the avoidance of doubt, each Statement of Work will have their own Term, which will extend the Initial Term of the Agreement if the term of the Statement of Work is longer than the Initial Term of the Agreement.

Intellectual Property Rights or IPR: any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including 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 now or in the future, in each case for their full term, together with any future rights and renewals or extensions.

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

Licence Agreement: means all agreements that may have to be entered into by the Supplier and/or the Client in respect of Third Party Services used.

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

Losses: means costs, fines, damages, losses and liabilities suffered by a Party.

Managed Services: the services described in the Statement of Work to be performed by the Supplier in accordance with this Agreement.

Managed Services Terms: means the terms and conditions relating to the provision of the Managed Services in Schedule 1.

Minimum Commitment: means the minimum commitment of usage or number of Authorised Users (as the case may be) agreed between the Parties from time to time.

NCE: means the new commerce experience for Microsoft products, including Microsoft 365, Dynamics 365, Power Platform and Windows 365.

NCE Subscription Services: means the services and use related to NCE subscription services.

NCE Subscription Terms: means the terms and conditions relating to the provision of the NCE Subscription Services in Schedule 3.

Normal Business Hours: 9 am to 5:30 pm local UK time on Business Days.

Out of Scope: means those out of scope services specified as such in the Statement of Work together with any other services which are not detailed in the Statement of Work.

Party: a party to this Agreement or parties.

Product(s): means the Microsoft or other third party services, tools, software, hardware, or professional support or consulting services provided under the terms of the Customer Agreement, applicable Licence Agreement, Third Party Terms or as otherwise agreed between the Parties.

Professional Services: the service described in the Statement of Work to be performed by the Supplier in accordance with this Agreement.

Professional Services Terms: the terms and conditions relating to the provision of the Professional Services in Schedule 2.

Purpose: the purposes for which the Client Personal Data is processed, as set out in the applicable Statement of Work.

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

Ready For Service Date: the date specified in the Statement of Work or as otherwise agreed between the Parties in writing that may be updated from time to time if the Supplier deems it necessary for the provision of the Services. For a Managed Services it shall be the earlier of (a) completion of specific activities identified by the Supplier; (b) completion of the applicable Professional Services; (c) commencement of the Subscription Services; or (d) such date as is notified by the Supplier. The exact date shall be confirmed by the Supplier in writing.

Relief Events: the following events:

- (a) any failure by the Client 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 Client, 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 Client 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) any telecommunications network defect, delay or failure or failure of the Client's hardware or other systems;
- (e) any of the causes or events set out in Clause 10.7.

Retail Prices Index: means the Retail Prices Index (all Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree (such agreement not to be unreasonably withheld or delayed), acting reasonably, most closely resembles such index.

Scheduled Downtime: means the total amount of time during which the Client is not able to access the Services due to planned maintenance. The Supplier may schedule system downtime, with prior agreement of the Client. Scheduled Downtime periods do not count against the service level calculation detailed in such Statement of Work.

Service Level Arrangements: any service level arrangements set out in the Statement of Work.

Services: means the provision of Managed Services, the Professional Services, NCE Subscription Services and/or Goods including consulting, advisory, integration or technical services performed by the Supplier under a Statement of Work or otherwise agreed further to the signed written agreement between the Parties.

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

Software: the proprietary software which is owned by or to the Supplier and licensed to the Client during the term of this Agreement as set out in the Statement of Work.

Statement of Work: means the statement of work or order form which sets out the Services and the Service Level Arrangements as set out under separate cover and which incorporates the terms and conditions of this Agreement.

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

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

Supplier: Kratos IT Ltd incorporated and registered in England and Wales with company number 13041722 whose registered office is at First Floor, Unit 5, The Chaplin 6 Wrotham Road, Borough Green, Sevenoaks, Kent, England, TN15 8DB.

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

Supply of Goods Terms: the terms and conditions relating to the supply of Goods in Schedule 4.

Term: means the Initial Term and any Subsequent Term, as applicable.

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

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

Third Party Terms: any terms and conditions relating to Third Party Services.

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

Unscheduled Downtime: means any time when any or all of the applications and Services provided by the Supplier to the Client shall be unavailable to the Client due to unexpected system failures other than Scheduled Downtime or the downtime is attributable to events not under the control of the Supplier.

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

- 1.2 Clause and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to **writing** or **written** includes e-mail.
- 1.9 Any phrase introduced by the words **including, includes, in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 References to Clauses are to the Clauses of this Agreement.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.12 In the event of any conflict or inconsistency between the Clauses of this Agreement, the Schedules, the Statement of Work, and the Customer Agreement / Licence Agreement / Third Party Terms (including any changes or variations to each of the Clauses, the Schedules, the Statement of Work, and the Customer Agreement / Licence Agreement / Third Party Terms), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
- (a) the Statement of Work;
 - (b) the Customer Agreement / Licence Agreements/ Third Party Terms, to the extent applicable to the Services;
 - (c) the Schedules;
 - (d) the Clauses.

2. PROVISION OF SERVICES

- 2.1 This Agreement sets out the terms and conditions under which the Supplier shall provide to the Client the Services.
- 2.2 Where the Services include:
- (a) the supply of Managed Services, the provisions of Schedule 1 shall apply in addition to the Clauses;
 - (b) the supply of Professional Services, the provisions of Schedule 2 shall apply in addition to the Clauses;
 - (c) the supply of the NCE Subscription Services, the provisions of Schedule 3 shall apply in addition to the Clauses; and
 - (d) the supply of Goods, the provisions of Schedule 4 shall apply in addition to the Clauses.
- 2.3 As long as there is no material adverse effect on the quality or performance of the Services, the Supplier can make any changes (without prior notice unless prohibited by applicable law) to the Statements of Work which are required to conform with any applicable safety, regulatory or other statutory requirement, or any Third Party request that Supplier is required to flow down to the Client.
- 2.4 This Agreement shall (i) be in substitution for any prior oral or other prior arrangements between the Supplier and the Client in connection with the purchase of the relevant Services; and (ii) prevail over any of the Client's inconsistent terms or conditions contained in, or referenced in, any order confirmation or other acknowledgement, quotation, purchase order(s), delivery note, invoice or similar document or implied by law, trade custom or practice.
- 2.5 No addition to, variation of or other amendment or purported amendment to any Statement of Work or this Agreement shall be binding on the Parties unless expressly stated as such, made in writing and signed by or acknowledged by a duly authorised representative of both Parties.
- 2.6 Any quote given by the Supplier is for budgetary purposes until financial and technical validation and shall not constitute an offer. For:

- (a) Managed Services or Professional Services, it is only valid for a period of fourteen (14) days; and/or
 - (b) the supply of Goods, it is only valid for a period of twenty-four (24) hours,
- from its date of issue unless otherwise agreed by the Supplier in writing and shall only become binding upon the signing of a Statement of Work.

3. RESPONSIBILITIES OF SUPPLIER

3.1 The Supplier shall:

- (a) provide the Services in accordance with the terms of this Agreement and the Statement of Work;
- (b) use its commercially reasonable endeavours to complete any Deliverables within any timescales set out under any Statement of Work but any such dates shall be estimates only;
- (c) commit sufficient resources to the provision of the Services to enable their delivery in accordance with the Agreement and Statement of Work;
- (d) provide the Services with due care, skill and ability in accordance with Good Industry Practice;
- (e) take such steps as may be required to fulfil its obligations under this Agreement and any Statement of Work;
- (f) utilising suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care;
- (g) notify the Client promptly if the Supplier is unable to comply with any of the terms of this Agreement, any of the Licence Agreements or any Statement of Work; and
- (h) observe and ensure that its personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Client Sites and which have been communicated to it a week prior to the Services commencing, where the Supplier is required to be on such Client Sites for the provision of the Services.

3.2 The Supplier shall co-operate with the Client in all matters relating to the Services and shall appoint an Authorised Representative ("**Supplier Representative**"), as the contact throughout the Services.

3.3 Unless otherwise set out in the Statement of Work, 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 and under the supervision of the Supplier. For the avoidance of doubt, the Supplier shall not be held liable for the actions and/or omissions of third parties who are not its subcontractors.

4. RESPONSIBILITIES OF CLIENT

- 4.1 To the extent that the Supplier requires access to the Client Site to perform the 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 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 writing from time to time.
- 4.2 The Client shall co-operate with the Supplier in all matters relating to the Services and shall appoint a minimum of two (2) Authorised Representatives ("**Client Representatives**"), who shall have authority to commit the Client on all matters relating to the relevant Service.
- 4.3 The Client agrees and acknowledges the terms of the applicable Third Party Terms, Licence Agreements and the terms of the Customer Agreement shall form part of this Agreement. For the avoidance of doubt, in the event the applicable Third Party Terms, Licence Agreements and/or the Customer Agreement is not applicable to the Services being received or delivered by the Supplier to the Client under this Agreement, such agreements shall not apply.
- 4.4 The Client shall:
- (a) adhere to any Acceptable Use Policy;
 - (b) make the Client's Operating Environment and Client-side Equipment, required to provide the Services, accessible to the Supplier's support staff, enable logons or passwords required for such support staff and provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
 - (c) ensure it has suitable licences in place for any third party software required (which is not issued by the Supplier) to allow the Supplier and its subcontractors full use in relation to the Services provided;
 - (d) co-operate with the Supplier in all matters relating to the Services as reasonably requested by the Supplier;
 - (e) not use the Services to receive, store or transmit material or data that is obscene, threatening, offensive, discriminatory, defamatory or in breach of confidence, infringes Intellectual Property Rights or other rights, gives rise to any cause of action against the Supplier in any jurisdiction or is otherwise unlawful;
 - (f) **Cancellation of Services.** The Client agrees to adhere to the dates scheduled for provision of Services by the Supplier as stated in the applicable Statement of Work. If the Client wishes to reschedule or cancel the dates for the provision of the Services, the Supplier will use reasonable endeavours to re-assign allocated resources to other clients. If such re-assignment is not possible and the Client has not provided more than fourteen (14) days advance written notice, then the Client shall be liable to pay the following cancellation charges in the form of damages ("**Cancellation Charges**") relating to this action, in addition to any specific costs relating to cancelling pre-booked travel arrangements and to unpaid Fees (if any) for any Services work that has been performed:

- (i) if dates are changed or cancelled at the Client's request more than fourteen (14) days before the scheduled start date no Cancellation Charges are payable;
 - (ii) if dates are changed or cancelled between seven (7) days and fourteen (14) days before the scheduled start date Cancellation Charges equivalent to fifty percent (50%) of the Fees for the Services to be provided at that time will be payable;
 - (iii) if dates are changed or cancelled less than seven (7) days before the scheduled start date Cancellation Charges equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable;
 - (iv) if dates are changed or cancelled less than twenty-four (24) hours before the scheduled start date Cancellation Charges equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable in addition to a charge of one hundred and twenty pounds (£120) plus VAT.
- (g) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises;
- (h) allow the Supplier or its designated subcontractors and third parties, global admin access to the Client's relevant servers and networking systems from a user account dedicated to the Supplier for the duration of the Agreement;
- (i) where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite or Office365) the Supplier will be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR) and/or Digital Partner of Record (DPOR) and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) and/or given Delegated Administration Privileges (DAP) and/or Granular Delegated Admin Privileges (GDAP) and Admin on Behalf of (AOBO) for a minimum of twelve (12) months from project completion date;
- (j) in respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution ("**POE**") within seven (7) days of the date of issue by Microsoft. In the event that the Client does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Client the amounts directly and the Client shall follow the payment terms in this Agreement;
- (k) provide all information and make available all resources as reasonably requested by Supplier in the execution of its obligations under this Agreement;
- (l) use all reasonable efforts to follow the reasonable instructions of Supplier support personnel with respect to the resolution of defects;
- (m) gather all relevant information prior to requesting assistance in respect of any defects including detailed defect description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a defect should be included such as network configuration details;
- (n) agree that if, in the course of performing the Services, it is reasonably necessary for the Supplier's performance of its obligations under a Statement of Work for Supplier to access or use any equipment, software or data of the Client (or which

is in the possession of the Client) then it shall where it is able to do so grant to the Supplier and any of its subcontractors a non-exclusive, royalty free, terminable licence to use the same solely for the purpose of delivering the Services only for as long as is strictly necessary to deliver such Services

4.5 The Client shall (unless otherwise specified in the Statement of Work or as otherwise set out in this Agreement):

- (a) use the Services only for lawful purposes and in accordance with this Agreement;
- (b) keep secure from third parties any passwords issued to the Client by the Supplier;
- (c) fully virus-check all data supplied to the Supplier pursuant to this Agreement;
- (d) comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- (e) carry out all other Client responsibilities set out in this Agreement and the Statement of Work 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.

4.6 In the event that the Client is in breach of its obligations under the Agreement (excluding payment obligations) then the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing thirty (30) days' notice to remedy such breach if capable of remedy. If the Client fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Statement of Works and/or 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.

4.7 In the event that the Client is in breach of its payment obligations under the Agreement then the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing fourteen (14) days' notice to remedy such breach if capable of remedy. If the Client fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. The Supplier shall have no liability or responsibility should the Services fail to comply with the Statement of Works and/or 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.

4.8 The Supplier shall not be liable for any delays or claims of whatsoever nature, which result, directly or indirectly, from the failure by the Client to comply with the reasonable requests of the Supplier or the breach by the Client of any provision of this Agreement.

5. PROJECT ORGANISATION

5.1 If requested in writing by the Client or specified in the Statement of Work, the Client Representatives and the Supplier Representative shall have regular meetings to monitor and review the performance of this Agreement, to discuss any changes proposed in accordance with Clause 14 and to discuss the Service Level Arrangements.

5.2 Before each meeting, the Client Representatives shall notify the Supplier Representative, and vice versa, of any problems relating to the provision of the Services for discussion at the meeting. At each such meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next meeting.

6. USER SUBSCRIPTIONS

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

6.2 In relation to the Authorised Users, the Client undertakes that:

- (a) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Third Party Services and/or Subscription Services;
- (b) each Authorised User shall keep any passwords used confidential;
- (c) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five (5) Business Days of the Supplier's written request from time to time;
- (d) it shall permit the Supplier to audit the Client's use of the Third Party Services and Subscription Services for each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Client's normal conduct of business;
- (e) if any of the audits referred to in Clause 6.2(d) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Client shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- (f) if any of the audits referred to in Clause 6.2(d) reveal that the Client has underpaid Fees to the Supplier and/or individuals are using the Third Party Services who are not Authorised Users, without prejudice to the Supplier's other rights, the Client shall pay to the Supplier an amount equal to such underpayment within ten (10) Business Days of the date of the relevant audit or upon request by the Supplier, promptly disable access to such individuals.

6.3 The Client may, from time to time during any Term:

- (a) subject to the NCE Subscription Terms and the Statement of Work, request that the User Subscriptions are increased but the Client is not permitted to decrease below the Minimum Commitment provisioned; or
- (b) request Additional Usage at any point in excess of the User Subscriptions, by giving the Supplier written notice subject to the following:

- (i) The Supplier shall evaluate the Client's request for Additional Usage and grant or refuse the request (in its sole discretion).
- (ii) If the Supplier approves the Client's request to purchase Additional Usage, the Client shall, within thirty (30) days of the date of the Supplier's invoice, pay to the Supplier the relevant Fees for such Additional Usage at the relevant price at the time of the request and, if such Additional Usage is purchased by the Client part way through the Term, such fees shall be pro-rated for the remainder of the Term.

6.4 Unless otherwise set out in the Statement of Work, the Supplier may adjust the Minimum Commitment on the anniversary of the Commencement Date to reflect any adjustments made to the User Subscriptions in accordance with this Clause 6 over the previous twelve (12) months or as otherwise agreed between the Parties.

7. PRICE AND PAYMENT

7.1 The Client shall pay the Fees for the Services (including any Third Party Services) as more fully set out in the relevant Statement of Work. Where these are based on the number of Subscription Users and/or Consumption, such Fees shall be variable upon the terms set out in the Statement of Work.

7.2 If no Fee is quoted, the Fee shall be calculated in accordance with the Supplier's Rates set out in the Statement of Work as amended from time to time in accordance with this Agreement.

7.3 For the avoidance of doubt, in the event the Client delays any Ready For Service Date or other agreed go-live date (which falls outside of the Cancellation Charges) or has not conducted its Acceptance Testing in accordance with Schedule 2, the Supplier may charge the Client for such delays in accordance with its Rates.

7.4 Clause 7.6 shall apply if the Services are to be provided on a time-and-materials basis. Clause 7.8 shall apply if the Services are to be provided on a Consumption basis. The remainder of this Clause 7 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.

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

7.6 Where the Services are provided on a time-and-materials basis:

- (a) the Supplier's standard hourly or daily rates are calculated on the basis of Normal Business Hours;
- (b) the Supplier shall be entitled to charge an overtime rate for time worked outside Normal Business Hours as set out in the Statement of Work;; and

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

7.7 The Supplier shall invoice the Fees in accordance with the payment intervals stated in the Statement of Work.

7.8 For all Consumption subscriptions ("**Consumption Subscriptions**"), the Client agrees and acknowledges that:

- (a) it may be required to submit monthly use reports based on its monthly usage of the applicable Third Party Service in accordance with the requirements set out in the applicable Statement of Work;
- (b) any adjustments or revisions to its monthly use report must be provided within thirty (30) days of the original invoice date together with a detailed explanation of the adjustment or revision;
- (c) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Statement of Work, Third Party Terms, Licence Agreement or Customer Agreement and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
- (d) Consumption Subscriptions may be subject to a cap. It will be billed at the next billing cycle including 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 the applicable Third Party Service sold on a Consumption basis may change during the subscription period;
- (e) where applicable, it shall pay all such usage and is responsible for monitoring its Consumption needs; and
- (f) for the avoidance of doubt, if, in spite of Clause 7.8(d), the Client utilizes the applicable Third Party Services in excess of any cap, the Client shall pay to the Supplier the Fees and other expenses in accordance with its actual use.

7.9 The Fees exclude (unless otherwise agreed and set out in the Statement of Work):

- (a) actual, reasonable travel costs and expenses including airfares, hotels and meals incurred by the Supplier or its subcontractors in performance of the 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 Services ("**Expenses**"). The Supplier shall obtain the Client's prior written approval before incurring any such expense, material or service exceeding a total cost of one thousand five hundred pounds (£1,500) in the aggregate per day and shall be payable by the Client in accordance with Clause 7.10; the costs of packaging, insurance and transport of the Goods; and
- (b) VAT or other relevant sales tax, which the Supplier shall add to its invoices at the appropriate rate.

7.10 The Client shall pay each undisputed invoice for the Fees and Expenses in full and cleared funds (without deduction or set-off) within fourteen (14) days of the date of such invoice unless otherwise agreed in writing by the Supplier or unless otherwise set out in the Statement of Work. In the event the Client pays by direct debit, the details of such direct

debit payments shall be set out in the Statement of Work and/or the invoice, as applicable. The Client shall pay each undisputed invoice for the Fees in full and cleared funds (without deduction or set-off). Expenses shall be invoiced separately.

- 7.11 All payments by the Client hereunder shall be in United Kingdom pound sterling unless otherwise agreed or set out in the Statement of Work and shall be paid to the Supplier's bank account as advised by the Supplier to the Client in writing.
- 7.12 Should the Client be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Fees payable shall be increased by the amount of such tax to ensure that the Supplier receives a sum equal to the amount to be paid under the applicable Statement of Work.
- 7.13 Without prejudice to any other remedy that the Supplier may have, if payment of the Fees or any part thereof is overdue then unless the Client has notified the Supplier in writing that such payment is in dispute within ten (10) days of the receipt of the corresponding invoice the Supplier may, without prejudice to any other rights or remedies, charge the Client interest on the overdue amount at the rate of four percent (4%) per annum above the base lending rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 7.14 The Client shall not be able to dispute any amounts which have been paid by the Client after a period of three (3) months has elapsed from the date of invoice.
- 7.15 The Supplier shall not be obliged to provide any of the Services and/or deliver any Goods while any duly issued invoice(s) remain unpaid under any Statement of Work, but should the Supplier choose to continue to do so, this shall not in any way be construed as a waiver of the Supplier's rights or remedies.
- 7.16 Subject to Clause 7.18 below, the Fees relating to the provision of Services shall increase on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period.
- 7.17 For the avoidance of doubt, the Supplier may increase any fees related to Third Party Services in line with any increases imposed upon the Supplier by such third parties upon reasonable notice and in line with the terms of Third Party Terms, any Licence Agreements and/or the Customer Agreement.
- 7.18 Notwithstanding and subject to Clauses 7.16 and 7.17, the Supplier reserves the right, on giving the Client thirty (30) days' notice, to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. If the Client does not agree with this increase, then they may terminate this Agreement upon thirty (30) days written notice and before such price increase takes effect. If the Supplier does not receive written notice within thirty (30) days, the Client is deemed to have agreed to the amendment to the Fees.

8. WARRANTIES AND SERVICE LEVELS

8.1 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;
- (b) it has the authority to grant any rights to be granted to the Supplier under this Agreement;
- (c) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to the Supplier and any of its subcontractors, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement; and
- (d) the Supplier's use in the provision of the Managed Services or otherwise in connection with this Agreement of any Third Party materials, including any Hardware 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.

8.2 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 Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- (c) it will comply with all applicable laws in performing its obligations under this Agreement; and
- (d) the Client's use of any Supplier materials and/or Third Party materials, including any materials supplied by the Supplier to the Client, shall not cause the Client to infringe the rights, including any Intellectual Property Rights, of any third party.

8.3 Except for any warranties and service levels expressly set forth in this Agreement, the Services are provided on an "as is" basis, and Client's use of the Services is at its own risk. The Supplier does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.

8.4 In the event that a defect, fault or impairment in the provision of the Service(s) causes a service interruption and the Supplier becomes aware of this either through the Client giving notification to the Supplier of such default, fault or impairment, or as a result of the Supplier's monitoring, then the Supplier shall use its commercially reasonable

endeavours to resolve that defect, fault or impairment as more fully set out in the Statement of Work and to the extent it reasonably can.

- 8.5 If the Supplier determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from: (i) the negligence, act, omission, or default of the Client or Designated User, (ii) the Client's breach of this Agreement, or (iii) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Client or (iv) any third party action in response to an act or omission of the Client or any person given access to the Service by the Client (including third party hosted software vendors) then the Supplier may recover from the Client all reasonable costs to be incurred by it or on its' behalf in connection with the remedy of such defect, fault or impairment. Therefore, for the avoidance of doubt, the Supplier can make no commitment to fix any fault and time is not of the essence.
- 8.6 Unless otherwise agreed or set out in the Statement of Work (as forming part of the Service) if the Client accesses the Services through the public internet or through a private circuit provisioned by a bandwidth provider of the Client's choice, the Client assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to be in the chosen provider's network.
- 8.7 If the Client moves from one Client Site to another site or makes changes to any Client Site or opens a new location to be added to the Client Sites, the Client must notify the Supplier in advance. The Supplier may need to carry out an inspection of any cabling and advise the Client of any work to bring the IT Infrastructure up to standard operating conditions at the new location in order to remain eligible for coverage. The Supplier will provide a quote if it is to provide additional resources or services in the case of any change at the Client Sites or new Client Sites for including as part of the Fees.
- 8.8 The Supplier will request approval from the Client's Representatives before making any significant changes to the Services. The Supplier will arrange any Scheduled Downtime in advance with the Client's Representatives. The Supplier is not responsible for Unscheduled Downtime that is due to anything outside the Supplier's control and the Supplier and its subcontractors may suspend some or all of the Services in order to carry out scheduled or emergency maintenance or repairs.
- 8.9 The Supplier will carry out network management routines to test the operations and functions of the relevant Services from time to time, notifying the Client in advance.
- 8.10 The Supplier reserves the right to take any action that it perceives necessary to protect the Client's systems even though this may impact on the Client's business activities. The Supplier will make reasonable endeavours to inform the Client by telephone or email in advance of such action, but such action will not be dependent on such notification having been given or acknowledged.
- 8.11 The Service Level Arrangements are specific to directly provided Services of the Supplier and do not relate to Third Party Services (of which such Third Party Services will be governed by their own relevant service levels).
- 8.12 The Supplier shall not in any circumstances be liable under its obligations in this Clause 8 if it can demonstrate that any failure of the Services was caused or contributed to by any Relief Event.

- 8.13 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Services will be uninterrupted or error-free.
- 8.14 The Client hereby warrants that it has not been induced to enter into this Agreement by any prior representations, nor has it relied on any oral representation made by the Supplier or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by the Supplier.

9. DATA PROTECTION

- 9.1 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 by the Supplier, the Supplier shall use commercially reasonable endeavours to restore the lost or damaged Client Data from the latest backup of such Client Data. The Supplier shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Client Data caused by any third party.
- 9.2 For the purposes of this Clause 9, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the Applicable Data Protection Laws.
- 9.3 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 9 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.
- 9.4 The Parties have determined that, for the purposes of Applicable Data Protection Laws, the Supplier shall process the personal data set out in the applicable Statement of Work, as a processor on behalf of the Client.
- 9.5 Without prejudice to the generality of Clause 9.3, 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.
- 9.6 In relation to the Client Personal Data, the applicable Statement of Work 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.
- 9.7 Without prejudice to the generality of Clause 9.3 the Supplier shall, in relation to Client Personal Data:
- (a) process that Client Personal Data only on the documented instructions of the Client, which shall be to process that Client Personal Data for the purposes set out in the applicable Statement of Work, 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 Processor 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 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 Law to continue to process that Client Personal Data. For the purposes of this Clause 9.7(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 9 and allow for reasonable audits by the Client or the Client's designated auditor, for this purpose, on reasonable written notice.

9.8 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 9;
 - (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 Law, 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) only 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).

- 9.9 The Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract insofar as it relates to the obligations set out in this Clause 9, or Applicable Data Protection Laws shall be limited to the amount set out in Clause 13.4.
- 9.10 To the extent that the Supplier cannot comply with a change to the Client's instructions when processing Personal Data without incurring material additional costs:
- (a) the Supplier shall: (i) immediately inform the Client, giving full details of the problem; and (ii) cease all processing of the affected data (other than securely storing those data) until revised instructions are received;
 - (b) any changes in the Client's instructions that affect the pricing structure or commercial relationship between the Parties should go through an appropriate Change Request (as set out in Clause 14).

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 Subject to Clause 10.2 below, on creation by the Supplier and upon the Supplier receiving payment in full, all Intellectual Property Rights in bespoke materials or code created exclusively under the Services ("**Bespoke IPR**") for the Client shall vest automatically in the Client. The Supplier hereby assigns to the Client its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Client hereby provides an irrevocable, worldwide, royalty-free licence to the Supplier for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.
- 10.2 Notwithstanding Clause 10.1 above, the Supplier and its respective licensors shall retain exclusive ownership of (i) all of its Background Materials; and (ii) ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are of general application and that are not based on or derived from the Client's business or Confidential Information ("**General IP**", together with the Background Materials, the "**Supplier Intellectual Property**"). The Supplier grants to the Client a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use the Supplier Intellectual Property. The Client may not, at any time including after termination of this Agreement, share any Supplier Intellectual Property with any third party without the Supplier's prior written consent. The Supplier may treat the Client's breach of this Clause 10.2 as a breach of the Agreement.
- 10.3 The Client shall pay and indemnify the Supplier, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the Supplier, arising by reason of claims that (1) the Supplier's possession of or use of the Client's Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Client or any of its Clients, modify, alter, replace combine with any other data, code, documents or other software, which alters the Supplier's Intellectual Property and such alterations infringe the Intellectual Property

Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

- 10.4 The Supplier shall pay and indemnify the Client, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the Client, arising by reason of claims that (1) the Client's possession of or use of the Supplier's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Supplier, modifies, alters, replaces combines with any other data, code, documents or other software, which alters the Client's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 10.5 If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 10, the Indemnified Party shall:
- (a) notify the Indemnifying Party in writing of any IPR Claim against it in respect of which it wishes to rely on the indemnity at Clause 10.3 or Clause 10.4 (as applicable);
 - (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
 - (c) provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
 - (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 10.6 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 Client 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 Client, such acceptance not to be unreasonably withheld; or
 - (b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Client, such acceptance not to be unreasonably withheld.
- 10.7 Except to the extent that the Supplier should reasonably have known or advised the Client the foregoing provisions of Clause 10.6, 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 Client 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 Client 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.

11. LICENCE OF SOFTWARE

11.1 In consideration of the Fee paid by the Client to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Client a non-exclusive, revocable, worldwide, non transferable licence for the duration of the applicable Statement of Work until terminated to use of the Software.

11.2 In relation to scope of use:

- (a) for the purposes of Clause 11.1, use of the Software:
 - (i) shall be restricted to use of the Software in object code form for the purpose of processing the Client's data for the normal business purposes of the Client (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Client); and
 - (ii) means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed;
- (b) the Client may not use the Software other than as specified in Clause 11.1 and Clause 1.12(a) without the prior written consent of the Supplier, and the Client acknowledges that additional fees may be payable on any change of use approved by the Supplier.

11.3 Except as expressly stated in this Clause 11, the Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Client, unless the Supplier is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Client shall request the Supplier to carry out such action or to provide such information (and shall meet the Supplier's reasonable costs in providing that information) before undertaking any such reduction.

11.4 The Client may not use any such information provided by the Supplier or obtained by the Client during any such reduction permitted under Clause 11.3 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

11.5 The Client shall not:

- (a) sub-licence, assign or novate the benefit or burden of this licence in whole or in part, unless expressly consented to in writing by the Supplier;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under this Agreement,

without the prior written consent of the Supplier.

11.6 The Client shall:

- (a) ensure that the Software is installed on designated equipment only;
- (b) keep a complete and accurate record of the Client's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
- (c) notify the Supplier as soon as it becomes aware of any unauthorised use of the Software by any person;
- (d) pay, for broadening the scope of the licences granted under this licence to cover the unauthorised use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

11.7 The Client shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Client is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Client of such inspections, which shall take place at reasonable times.

12. THIRD PARTY SERVICES

12.1 The Supplier shall procure any Third Party Services required by the Client for the provision of the Services and as more fully set out in the Statement of Work. Except as expressly set out in the relevant Licence Agreement and/or Third Party Terms (as the case may be), the Services will be provided subject to any Licence Agreement, Third Party Terms or other terms and conditions relating thereto. The Supplier expressly excludes:

- (a) any warranty to the Client that the Third Party Services supplied or licensed under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in the marketing, sales or other associated documentations; and
- (b) any and all liability in relation to the use of such Third Party Services.

12.2 The Client shall remain liable for any and all payments owed to the Supplier throughout this Agreement and until the end of the respective licence terms for such Third Party Services (the "**Licence Fees**").

12.3 It is a condition of this Agreement that the Client shall enter into such direct Licence Agreements and/or accept Third Party Terms issued by the Third Party where the Client

must directly contract with that Third Party as so prescribed by the relevant suppliers of each Third Party Services identified within this Agreement and/or in the applicable Statement of Work. In the event the Client does not accept the terms of such Licence Agreements and/or Third Party Terms (whether directly contracted with the Supplier or the relevant Third Party Supplier), the Supplier reserves the right to suspend the provision of the Services until such time as the Client enters into such Licence Agreement and/or accepts such Third Party Terms.

- 12.4 The Client shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged breach of such Licence Agreements and/or Third Party Terms.
- 12.5 The Client acknowledges that it is responsible for ensuring that the Client's Hardware, and operating software for such Hardware is compatible with the Third Party Services and the Supplier gives no warranty in relation thereto unless agreed otherwise in writing between the Parties in the Statement of Work.
- 12.6 The Client acknowledges that all back up shall be the sole responsibility of the Client unless otherwise expressly agreed to by the Supplier in writing.

13. EXCLUSIONS, LIMITATIONS OF LIABILITY, WARRANTIES AND INDEMNITIES

- 13.1 The Client acknowledges and agrees that, except as expressly provided in this Agreement or unless it is a Service under a relevant Statement of Work, the Client assumes sole responsibility for:
- (a) all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Client's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
 - (b) loss or damage arising from or relating to any Relief Event.
- 13.2 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.
- 13.3 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 Any breach of the Party's responsibilities under Clause 9 shall be limited to five hundred thousand pounds (£500,000) in the aggregate, which shall count towards the cap set out in Clause 13.6.
- 13.5 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 and twenty five percent (125%) of the price paid for the Services during the twelve (12) months preceding the date on which the claim arose.
- 13.6 Except as expressly and specifically provided in this Agreement neither Party shall have any liability for any Losses or damages which may be suffered by the other Party (or any person claiming under or through that Party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (a) special damage even if the other Party was aware of the circumstances in which such special damage could arise;
 - (b) loss of profits;
 - (c) loss of anticipated savings;
 - (d) loss of business opportunity;
 - (e) loss of goodwill and reputation; and/or
 - (f) loss or corruption of data.
- 13.7 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.
- 13.8 Any indemnity set out in this Agreement shall not apply unless the Party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge and gives the other Party full opportunity to control the response to and the defence of such claim; including without limitation, the right to accept or reject settlement offers and to participate in any litigation provided that in no event shall the indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.
- 13.9 The Supplier shall maintain in force the following minimum insurance policies:

- (a) Public and Products Liability Insurance Policy - limit ten million pounds (£10,000,000) per claim;
- (b) Professional Indemnity Insurance Policy – limit five hundred thousand pounds (£500,000) in the aggregate;
- (c) Employers Liability Policy – limit ten million pounds (£10,000,000) per claim;
- (d) Cyber Insurance- limit one million pounds (£1,000,000) in the aggregate.

14. CHANGE REQUESTS

- 14.1 Either Party may request changes to any Services (in each case, a “**Change Request**”). Any Change Request shall be made in writing and sent to the Client Representatives or Supplier Representative (as appropriate) and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.
- 14.2 Where the Parties propose a Change Request the Supplier shall provide a written estimate of the likely time required to implement the change, any necessary variations to the charges as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of this Agreement. The Client shall notify the Supplier whether it accepts or reasonably rejects the Change Request within five (5) Business Days of its receipt of the written estimate.
- 14.3 Until such time as a Change Request has been agreed to by the Parties, the Parties shall continue to perform their respective obligations under the Statement of Work without taking into account the Change Request. Once duly agreed by both Parties, the Change Request shall be deemed incorporated into Agreement and Statement of Work and the Supplier shall commence performance of the Change Request accordingly.
- 14.4 Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.
- 14.5 Unless otherwise agreed in writing, Supplier shall be entitled to charge the Client at Supplier's then current Rates for investigating, reporting on and, if appropriate, implementing any Change Request requested by the Client.

15. CONFIDENTIALITY

- 15.1 Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by the relevant Statement of Work.
- 15.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its Representative, in each case under the same conditions of confidentiality as set out in Clause 15.1.
- 15.3 The obligations of confidentiality set out in this Clause 15 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from

sources other than the disclosing Party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving Party without use of or reference to the Confidential Information.

16. TERM AND TERMINATION

- 16.1 This Agreement shall commence on the Commencement Date and each Statement of Work shall commence on the Services Commencement Date and shall remain in full force for the Initial Term unless otherwise agreed by the Parties or earlier terminated in accordance with the term of this Agreement. Thereafter, this Agreement and each Statement of Work shall continue to automatically renew for a Subsequent Term, unless a Party gives written notice to the other Party, not later than ninety (90) days before the end of the initial Term or the relevant Subsequent Term, to terminate this Agreement.
- 16.2 Without prejudice to any rights that the Parties have accrued under this Agreement or any of their respective remedies, obligations or liabilities, a Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- (a) the Client breaches its obligations in Clauses 4.6 and 4.7;
 - (b) the other party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so;
 - (c) the other Party breaches any of the terms of Clause 9, Clause 15 or Clause 20;
or
 - (d) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 16.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 16.4 On termination of this Agreement for any reason:
- (a) the Supplier shall immediately cease provision of the Services;
 - (b) the Client shall pay any and all invoices and sums due and payable up to and including the date of termination including (i) all remaining amounts owing up to the end of the Initial Term or the Subsequent Term (as applicable); (ii) any Licence Fees as set out under Clause 12.1; and (iii) any termination fees that the Supplier incurs from any of its third parties as a consequence of such early termination. The Supplier shall use reasonable endeavours to mitigate any loss but the Client acknowledges and agrees that any Third Party fees may not be mitigated by the Supplier and the Client shall not hold the Supplier responsible if it incurs full termination fees;
 - (c) all licences granted under the Agreement will terminate immediately except for fully-paid, fixed term and perpetual licences;
 - (d) for metered Products billed periodically based on usage, the Client must immediately pay for unpaid usage as of the termination date; and

- (e) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.

- 16.5 Save as provided in Clause 18 or elsewhere in this Agreement, or by mutual consent and on agreed terms, or due to a Force Majeure Event, neither Party shall be entitled to terminate a Statement of Work. Termination of a Statement of Work shall not by default, terminate other Statement of Works nor this Agreement.
- 16.6 Termination of any Statement of Work shall be without prejudice to any other rights which any Party may have under any other Statement of Work.
- 16.7 If for any reason a contract between a Third Party Supplier and the Supplier relating to the Supplier's right to use, install or support Third Party Services which is the subject of the Agreement is terminated, then the Agreement or applicable Statement of Work (as the case may be) shall automatically terminate, save that where the Agreement or Statement of Work relates to other Services other than that Third Party Service, termination of the Agreement or Statement of Work shall operate only in so far as it relates to such Third Party Services.
- 16.8 Upon termination of this Agreement or a specific Statement of Work for any reason the Supplier will provide to the Client and / or to any new supplier selected by the Client (the "**Successor Service Provider**") such assistance as reasonably requested by the Client in order to effect the orderly transition of the applicable Services, in whole or in part, to the Client or to Successor Service Provider (such assistance shall be known as the "**Termination Assistance Services**") during any period of notice of termination (the "**Termination Assistance Period**"). Any Termination Assistance Services required by the Client for the transition of Services during the Termination Assistance Period shall be provided by the Supplier at its then current time and materials fee rate for such period of time and upon such terms as shall be mutually agreed.
- 16.9 Upon a termination of the Agreement or a specific Statement of Work (as applicable), the Supplier shall only retain the Client Data for a maximum period of three (3) months from the date of termination and may delete all such copies of its Client Data after the three (3) months period has ended.
- 16.10 The provisions of Clauses 7, 8, 9, 10, 11, 13, 17, 18, 19, and 21 shall survive termination of any Statement of Work or this Agreement.

17. STAFF TRANSFER AND NON-SOLICITATION

- 17.1 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.
- 17.2 Neither Party shall solicit the other Party's staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of 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.
- 17.3 In the event that either Party is in breach of Clause 17.2 above then the Party in breach shall pay to the other by way of liquidated damages an amount equal to fifty percent

(50%) per cent of the gross annual salary or 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. This provision shall be without prejudice to either Party's ability to seek injunctive relief.

- 17.4 The Parties hereby acknowledge and agree that the formula specified in Clause 18.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

18. RELIEF EVENTS

- 18.1 Subject to Clause 13.3, 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. FORCE MAJEURE

- 19.1 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 an event of Force Majeure except to the extent that the Supplier could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of this Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice) including strikes, computer viruses and malware, pandemics, epidemics, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of the Supplier), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a "**Force Majeure Event**"), provided that:

- (a) the 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 event of Force Majeure 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.

20. ANTI-BRIBERY AND MODERN SLAVERY

- 20.1 The Supplier shall:
- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 ("**Relevant Requirements**");
 - (b) promptly report to the 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.
- 20.2 The Supplier shall procure that any person associated with the Supplier, who is performing services in connection with this Agreement, adheres to terms equivalent to those imposed on the Supplier in this Clause 200 ("**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.

- 20.3 For the purpose of this Clause 200, 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 20 a person associated with the Supplier includes any subcontractor of the Supplier.
- 20.4 In performing its obligations under this Agreement, the Supplier shall:
- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force the Modern Slavery Act 2015; and
 - (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

21. WAIVER

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

22. SEVERANCE

- 22.1 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.
- 22.2 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.

23. ENTIRE AGREEMENT AND AMENDMENT

- 23.1 This Agreement and its references to further documentation, the Licence Agreements and the Statement of Works 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.
- 23.2 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.
- 23.3 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.

23.4 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.

24. ASSIGNMENT

24.1 The Client shall not without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed) assign or, transfer or charge or deal in any other manner with either the benefit or the burden of this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

25. NO PARTNERSHIP OR AGENCY

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

26. THIRD-PARTY RIGHTS

26.1 This Agreement is made for the benefit of the Parties, to it and (where applicable) their successors and permitted assigns, and Microsoft (in respect of enforcing the terms of the Customer Agreement) and is not intended to benefit or be enforceable by anyone else.

27. NOTICES

27.1 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.

27.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

27.3 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.

28. DISPUTE RESOLUTION

28.1 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**").

28.2 If the Parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five (5) Business Days thereafter):

- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement ("**Designated Representative**"); and

(b) notify the other Party in writing of the name and contact information of such Designated Representative.

- 28.3 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.
- 28.4 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.

29. MARKETING

- 29.1 Both Parties agree to reasonably cooperate in connection with the creation of mutually beneficial marketing communications, which shall include, at a minimum, a press release, case study and a reference to Client on Supplier's website, provided that in no event shall either Party use the name, trademarks or other proprietary identifying symbols of the other Party without such Party's prior written consent, which consent shall not be unreasonably withheld or delayed.

30. GOVERNING LAW AND JURISDICTION

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

SCHEDULE 1 – MANAGED SERVICES

1. Interpretation

- 1.1 Except as defined in this Schedule 1, capitalised terms shall have the meanings given to them in the Master Services Agreement.
- 1.2 In the event of conflict with the terms of this Schedule 1 and the Master Services Agreement, the provisions in this Schedule 1 shall take precedence and in the event of a conflict with the terms of this Schedule 1 and a Statement of Work, the provisions of the Statement of Work shall take precedence over this Schedule 1.

2. Managed Services

- 2.1 The Supplier will provide the Managed Services in accordance with the Statement of Work and the terms of the Master Services Agreement with all due care, skill and ability during the Term and a Subsequent Term (if applicable) unless earlier terminated for any reason.
- 2.2 The Supplier shall provide the Managed Services in accordance with the Service Level Arrangements as stated in the Statement of Work.
- 2.3 Unless otherwise specified in the relevant Statement of Work or agreed in writing by the Supplier, the Supplier will provide the Managed Services remotely.
- 2.4 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.
- 2.5 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).
- 2.6 The Client shall not provide the Managed Services to third parties unless otherwise indicated in the Statement of Work or as otherwise agreed by the Supplier in writing.
- 2.7 The Client acknowledges that certain conditions outside of the Supplier's control may adversely impact the ability of the Supplier to perform functions of the Managed Services. Examples of such conditions are listed below:
 - (a) failure of Client Hardware, software or operating system;
 - (b) partial or full failure of Third Party Services
 - (c) network connectivity issues between Local System Components and the Supplier's platform;
 - (d) network connectivity issues between Local System Components and its third party's servers.

2.8 The Supplier reserves the right to:

- (a) modify the Supplier's System, its network, system configurations or routing configuration; or
- (b) modify or replace any Hardware 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 the 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 Request.

2.9 If the Supplier breaches its obligations in paragraph 2.1 of this Schedule 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.

2.10 The Managed Services acquired by the Client under the Agreement are solely for the Client's own internal use and not for resale or sub-licensing, unless otherwise agreed in writing.

2.11 The Supplier may suspend, revoke or limit use of the Managed Services, wholly or partly (i) in case of late payments, (ii) if the Supplier in its absolute discretion finds that a risk to the overall integrity of the Managed Services has occurred, or (iii) other reasonable grounds exist. If the cause of the suspension is reasonably capable of being remedied, the Supplier will provide the Client notice of what actions the Client must take to reinstate the Managed Services and/or Products. If the Client fail to take such actions within a reasonable time, the Supplier may terminate the applicable Managed Service.

2.12 The Supplier is entitled to amend the terms of the Agreement and this Schedule 1 in order to reflect any changes and updates received from its Third Parties or otherwise if the Supplier has reasonable grounds for such amendment. Hereunder, the Supplier may reasonably change prices, contents of the Managed Services, service hours or service levels.

3. Responsibilities of the Supplier

3.1 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Managed Services will be:

- (a) free from faults, interruptions or errors;
- (b) available one hundred percent (100%) of the time.

3.2 In relation to the Managed Services specifically and notwithstanding the Supplier's obligations under paragraph 2.1 of this Schedule 1, the Supplier shall:

- (a) staff the Supplier support desk with a team of skilled individuals (whether subcontracted or not);
- (b) maintain a team skilled in the platform and with knowledge of the systems developed to deliver the solution; maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;

- (c) undertake a regular account review, to discuss the Client's service needs and ensure that the Agreement is in alignment with its needs;
- (d) use commercially reasonable endeavours to follow the instructions of the Client and will remain courteous during any communications with Client personnel; and
- (e) provide the Client with reasonable co-operation in relation to the Agreement.

3.3 The Supplier shall be under no obligation to provide the Managed Services to the Client in the following circumstances (unless specified under the Statement of Work);

- (a) unauthorised use of the Services by the Client or use otherwise than in accordance with the Agreement;
- (b) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
- (c) providing any other services not covered herein;
- (d) training; and
- (e) providing the Managed Services to the Client where such support would have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client.

3.4 The 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.

4. Responsibilities of the Client

4.1 The Client shall (unless otherwise specified in the Statement of Work or as otherwise set out in the Master Services Agreement):

- (a) 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;
- (b) provide the Supplier at least seven (7) Business Days' notice in advance of any intention or move to change when applicable Client-side Equipment or Client's Operating Environment or data-feeds that will directly impact the Managed Services. If such notice has not been received on time, the Supplier will have to make additional effort to return the Client's systems to an acceptable state for continued support, and will charge accordingly at its then standard charging rate.

4.2 The Client shall not access, 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;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment; and/or
- (f) is otherwise illegal or causes damage or injury to any person or property;

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

4.3 The Supplier may in the provision of the Services make recommendations in relation to the Client's system including (but not limited to) the Client's security configuration, hardware, software and/or general IT system configuration. In the event that the Client does not wish to follow the Supplier's recommendations and, in the Supplier's reasonable opinion, such refusal will have an adverse effect on the Supplier's ability to provide the Services in accordance with this Agreement and the applicable Statement of Work, and agreement is not reached in respect of (i) any necessary action; (ii) the Services; and/or (iii) applicable Fees, then the Supplier reserves the right to cease provision the affected Services in whole or in part and/or to terminate the Agreement and/or the applicable Statement of Work.

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. Warranties

6.1 The Client warrants:

- (a) that the Supplier's use in the provision of the Managed Services or otherwise in connection with the Agreement of any Third Party materials, including any Hardware supplied by the Client to the Supplier for use in the provision of the Managed Services or otherwise in connection with the Agreement, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) it will comply with and use the Managed Services in accordance with the terms of the 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 or in breach of the Customer Agreement.

6.2 The Client is solely responsible for securing and backing up its data. The Supplier is not responsible or liable for the deletion of or failure to store any Client Data and other communications maintained or transmitted through the use of the Managed Services or Products.

- 6.3 The Supplier does not warrant uninterrupted or error-free operation of the Managed Services and Products. Unless otherwise agreed in writing, the Managed Services and Products are designed, manufactured and intended for low-risk activities.
- 6.4 The Client acknowledges and accepts that where the Products are provided by Microsoft or a Third Party and that any representations or warranties regarding the use of the Products is set out in the Customer Agreement, applicable Licence Agreement or Third Party Terms (as applicable). The Supplier has no responsibility for the suitability, availability, functionality or otherwise regarding the Managed Services and Products.
- 6.5 The Supplier warrants that it shall perform the Managed Services in a professional manner. As the Client's sole and exclusive remedy for breach of the foregoing warranty, the Supplier shall either correct the non-conforming Managed Service at no additional charge to the Client, or, in the event the Supplier is unable to correct after good-faith efforts, refund the Client a pro rata amount for the non-conforming Managed Service. To receive such remedy, the Client must promptly report deficiencies in writing to the Supplier, but no later than thirty (30) days after the first date the deficiency is identified, or should have been identified, by the Client.
- 6.6 The warranties provided in this Schedule 1 are the exclusive warranties from the Supplier in relation to the Managed Services.

7. Limitation of Liability

- 7.1 Subject to Clause 13.3 of the Master Services Agreement, 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.
- 7.2 Except as expressly and specifically provided in the Agreement, 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.

SCHEDULE 2 – PROFESSIONAL SERVICES

1. Definitions

- 1.1 The following definitions in this paragraph 1 apply in this Schedule 2 (Professional Services).

Acceptance Criteria: means the acceptance criteria as specified in paragraph 2.2 of this Schedule 2 (Professional Services) or referred to in a Statement of Work or as otherwise agreed by the Parties expressly in writing after the date of the Statement of Work against which the Acceptance Tests are to be carried out to determine whether the Deliverables meet the Statement of Work, are satisfactory and ready to be invoiced.

Acceptance Tests: means the acceptance tests as specified or referred to in the Statement of Work or as agreed between the Parties, to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

Issues List: means a written list of the non-conformities to the Acceptance Criteria for a specific Deliverable.

- 1.2 Except as defined in this Schedule 2, capitalised terms shall have the meanings given to them in the Master Services Agreement.
- 1.3 In the event of conflict with the terms of this Schedule 2 and the Master Services Agreement, the provisions in this Schedule 2 shall take precedence and in the event of a conflict with the terms of this Schedule 2 and a Statement of Work, the provisions of the Statement of Work shall take precedence over this Schedule 2.

2. Acceptance of the Professional Services

- 2.1 The relevant Statement of Work shall specify the Deliverables or Services (as the case may be) that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.
- 2.2 In relation to any Acceptance Testing:
- (a) the Client shall have a reasonable period of time, up to five (5) Business Days unless otherwise specified in the Statement of Work, from the Supplier's delivery of each Deliverable under the relevant Statement of Work (the "**Acceptance Period**") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "**Acceptance Criteria**"). If the Client determines that a Deliverable does not conform to the Acceptance Criteria, the Client shall by the last day of the Acceptance Period provide to the Supplier an Issues List of the non-conformities to the Acceptance Criteria;
 - (b) the Client shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period (as defined in paragraph 2.2 (a) of this Schedule 2) if any of the Deliverables do not conform to the Acceptance Criteria. In the event that Client has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under these Schedule such Deliverable shall be deemed accepted as if the Client had issued a written acceptance thereof. Once the Deliverable has been accepted by the Client and payment

has been settled in accordance with Clause 7 of the Master Services Agreement, the Deliverable shall become the property of the Client. 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 paragraph 2.2 (d) of this Schedule 2 below.

- (c) If:
- (i) the Client does not provide any written comments in the initial period described in paragraph 2.2(a) above;
 - (ii) commences live running of the whole or part of such deliverable other than in the course of undertaking Acceptance Testing; or
 - (iii) if Deliverables or Services are found to conform with the Statement of Work;

then in each case the Service or Deliverable shall be deemed accepted from the date of the notification by the Supplier pursuant to paragraph 2.2(a).

- (d) If there are any non-conformities within any Deliverable, which have been highlighted by Client or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Client for this reason and such non-conformity is a directly attributable act or omission on the part of the Supplier (and not subject to a Change Request (attributable to the Client's acts or omissions including inadequate Acceptance Testing) the Supplier shall (without prejudice to the Client's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- (e) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Client 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 Client, any amounts paid or payable by Client to Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied.
- (f) If the Supplier terminates work on any Deliverable in accordance with paragraph 2.2(e), the Supplier agrees not to charge Client, any amounts paid or payable by Client to Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied. If the Supplier is unable to correct the non-conformity within thirty (30) Business Days, either Party may terminate the part of the Statement of Work which specifically relates to the non-conforming Deliverable which cannot be remedied without further liability to the other.

SCHEDULE 3 – NCE SUBSCRIPTION TERMS

1. NCE CSP Subscription

Where the Services referred to in the Supplier's Statement of Work include the provision of Microsoft products or services under the New Commerce Experience ("**NCE Subscription Services**"), the NCE Subscription Services shall be provided in accordance with and governed by the Statement of Work and these terms (which are hereinafter referred to as the "**NCE Subscription Terms**").

2. Interpretation

- a) The following definitions in this paragraph 2.1. apply in these NCE Subscription Terms.

Cap: is the total monthly volume of Microsoft services which the Client 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: any of the Microsoft-hosted online services subscribed to by Client.

Subscription(s): the purchase of a Subscription Service.

Third Party Distributor: the third party who sells the Product(s) to the Client or the Supplier (as the case may be).

- b) Except as defined in these NCE Subscription Terms, capitalised terms shall have the meanings given to them in the Master Services Agreement.
- c) In the event of conflict with the terms of these NCE Subscription Terms and the Master Services Agreement, the provisions in these NCE Subscription Terms shall take precedence and in the event of a conflict with the terms of these NCE Subscription Terms and a Statement of Work, the provisions of the Statement of Work shall take precedence over these NCE Subscription Terms.

3. Service Provision

- 3.1. By submitting an order for NCE Subscription Services, the Client (i) represents that any subscription commitments and requirements disclosed are complete and accurate in all respects; (ii) agrees to pay the Supplier for all orders it submits for Products and the Subscription Services; (iii) agrees to the terms of the Master Services Agreement and the Statement of Work.
- 3.2. By placing an order with the Supplier, the Client represents and warrants that the Client has accepted the Customer Agreement.
- 3.3. Once an order for a Subscription Services has been accepted by the Supplier:

- (a) Subscriptions shall continue for the duration of the Term and any Subsequent Term unless terminated in compliance with the Statement of Work or Clause 16 of the Master Services Agreement; and/or
- (b) adjustments may only be made to increase the Minimum Commitment and not decrease below any current Minimum Commitment provisioned as more fully set out in the Master Services Agreement, these NCE Subscription Terms and the Statement of Work (as applicable to the NCE Subscription Services).

4. Client's obligations

- 4.1. The Client shall no later than the 5th each month report its use of the Subscription Services to the Supplier for the preceding month. By providing the Supplier the report, the Client certifies that it is accurate and complete. The Supplier shall verify the reports submitted by the Client. The Client acknowledges, however, that the Supplier has no effective means to continuously control the Client's use of the Subscription Services and that the Supplier's verification and reporting will normally be based exclusively on Client's reports to the Supplier. The Client understands that Client's correct reporting of its use of its Subscription Services is of imperative importance. If the Client does not provide the Supplier a report on the date specified above, the Client shall instead allow the Supplier to report either (i) that the Client has no use of the Subscription Services during the preceding month, or (ii) the same use of the Subscription Services as during the previous month. Should the Client fail both to provide the monthly report and to instruct the Supplier accordingly, then the Supplier shall report the use of the Subscription Services, acting reasonably, believes is an accurate use of the Subscription Services or as reported back to the Supplier by Microsoft, and the Client shall be bound to pay license fees to the Supplier accordingly. The previous paragraphs do not relieve the Client from reimbursing the Supplier fully for any claims from its third parties including Microsoft if the Client's use of the Subscription Services proves to be greater than the use of the Subscription Services reported to the Supplier.
- 4.2. The Client agrees and acknowledges to adhere to the terms of the Customer Agreement which govern the use of the Subscription Services and 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 Statement of Work. The Statement of Work 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 Client agrees and acknowledges that:

- (a) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Customer Agreement 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 Client further acknowledges and accepts that the Supplier may establish or install a technical lock or barrier (the "Barrier"), which prevents the Client from utilization of a Product in excess of the Cap;
- (e) for the avoidance of doubt, if, in spite of paragraph (c), the Client utilizes a Product in excess of the Cap, the Client 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 Client from paying fees and costs in accordance with its actual utilization of a Product. The Supplier has no responsibilities with regards to preventing the Client 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 Statement of Work in line with the percentage increase in the Retail Prices Index in the preceding twelve (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 or Third Party Distributor upon thirty (30) days' notice and in line with the terms of the Customer Agreement. Notwithstanding the foregoing: (i) the prices for Products may change without notice; and (ii) the Supplier will not be required to provide any prior notice before the effectiveness of a decrease or increase in Product Fees that relates to a currency fluctuation event.

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

6. Intellectual Property

6.1. The Client acquires only such limited rights to use the Products as is explicitly described in the Customer Agreement. Any use by the Client 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 Client and Microsoft.

7. Cancellation

- 7.1. Subject to paragraph 6.2, where the Client has procured Products or Online Services from the Supplier, the Client may cancel the applicable order in line with the terms set out by Microsoft if the Client notifies the Supplier within seventy two (72) hours 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.
- 7.2. The Client acknowledges and accepts that any cancellation pursuant to paragraph 6.1 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.
- 7.3. 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 Client 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 Client if Microsoft and/or Third Party Distributor do not issue a credit.

8. Limitation of liability

- 8.1. For the avoidance of doubt, the terms set out in the Customer Agreement govern the rights and responsibilities of the Client 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. All other services which falls outside the Subscription Services and Online Services are governed by the terms of the Agreement and shall take precedence over the terms of the Customer Agreement should any conflict arise over the use of such services.
- 8.2. Notwithstanding anything, to the contrary in the Agreement, the Client shall indemnify the Supplier from and against any claims, including but not limited to claim for license fees that directly or indirectly arises from the Client's use of the Subscription Services or reporting under the Agreement.

9. Term & Termination

- 9.1. The Client's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of these NCE Subscription Terms and the Master Service Agreement (as applicable). Unless otherwise specified in the applicable the Statement of Work (as applicable to the NCE Subscription Services), the Client shall remain liable for any and all payments due in respect of the licences until the end of the respective subscription period.
- 9.2. Termination of the licences will not affect any other Services provided under these NCE Subscription Terms or the Agreement.
- 9.3. The Supplier shall not be liable whatsoever to the Client following any termination or suspension of the Subscription Services for legal, regulatory or any other reason reasons by Microsoft or the Third Party Distributor.
- 9.4. The Supplier may terminate the NCE Subscription Services immediately on giving written notice to the Client if:
 - (a) payment of any amount due from the Client under these NCE Subscription Terms is overdue by ten (10) Business Days or more provided that the Supplier has given the Client ten (10) days' written notice of such failure to pay;
 - (b) upon termination by Microsoft or the Third Party Distributor of the licence(s); and/or
 - (c) in accordance with the Customer Agreement.
- 9.5. On termination of the Agreement for any reason:
 - (a) the Client shall pay all outstanding sums owing to the Supplier up to and including the date of termination;
 - (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 Client must immediately pay for unpaid usage as of the termination date; and
 - (d) if Microsoft is in breach, and the Client is entitled, the Client 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

SCHEDULE 4 – SUPPLY OF GOODS

1. Interpretation

- 1.1 Except as defined in this Schedule 4, capitalised terms shall have the meanings given to them in the Master Services Agreement.
- 1.2 In the event of conflict with the terms of this Schedule 4 and the Master Services Agreement, the provisions in this Schedule 4 shall take precedence and in the event of a conflict with the terms of this Schedule 4 and a Statement of Work, the provisions of the Statement of Work shall take precedence over this Schedule 4.

2. The Goods

- 2.1 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement or have any contractual force.
- 2.2 To the extent that the Goods are to be manufactured in accordance with the Client's specification, the Client shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Statement of Work. This paragraph 2.2 of this Schedule 4 shall survive termination of the Agreement.
- 2.3 The Supplier reserves the right to amend the Statement of Work if required by any applicable statutory or regulatory requirements.
- 2.4 Where the Goods are being supplied by a Third Party supplier, they will be supplied subject to any terms and conditions of sale and returns policy relating thereto by the relevant manufacturer and/or Third Party supplier.

3. Prices

- 3.1 Prices for Goods in the Supplier's stock ready to be shipped will be established at the time the order is accepted by the Supplier. If the Client places an order for Goods not in stock at the time of order (a "**Backorder**") or the Client places an order for scheduled delivery, such orders shall be irrevocable and the price for such Goods shall be the price established at the time the Backorder or scheduled delivery is accepted by the Supplier.
- 3.2 Notwithstanding the foregoing, the Supplier reserves the right to increase its prices after acceptance of a Backorder or scheduled delivery due to an increase in its Third Party supplier's price to the Supplier or an increase in direct costs to which the Supplier becomes subject (including without limit costs resulting from currency fluctuation) but

the Supplier shall only increase its price by such level as is necessary to reflect such increases.

- 3.3 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.

4. Delivery

- 4.1 The Supplier shall endeavour to deliver Goods to the agreed delivery location on the agreed delivery date.
- 4.2 If the Supplier fails to deliver Goods by the relevant delivery date after being given a reasonable opportunity to remedy such delay, except to the extent that such delay is due by a third party for which the Supplier shall have no liability, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by:
- (a) a delay from the manufacturer, third party supplier or other third party;
 - (b) an event of Force Majeure; 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.
- 4.3 If ten (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.
- 4.4 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. Warranties

- 5.1. Subject to paragraph 5.4 of this Schedule 4, the Supplier warrants that, for such period as is offered by the manufacturer (if any) ("**Warranty Period**"), the Goods shall:
- (a) conform in all material respects with the relevant section of the Statement of Work;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2. Subject to paragraph 5.3 of this Schedule 4, if:

- (a) the Client gives notice in writing to the Supplier during the Warranty Period, within five (5) Business Days of discovery that some or all of the Goods do not comply with the warranties set out in paragraph 5.1 of this Schedule 4;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Client (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, repair or replace any Goods that are found to be defective, or refund the price of such defective Goods in full.

5.3. The Supplier shall not be liable for the Goods' failure to comply with the warranties set out in paragraph 5.1 of this Schedule 4 if:

- (a) the Client makes any further use of such Goods after giving notice of defects in accordance with paragraph 5.2 of this Schedule 4;
- (b) the defect arises because the Client failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or Statement of Work supplied by the Client;
- (d) the Client alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Statement of Work as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 5.4. Insofar as the Goods comprise or contain goods or components which were not manufactured or produced by the Supplier, the Client shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer and is permitted to pass onto the Client.
- 5.5. The Supplier's only liability to the Client if the Goods fail to comply with the warranties set out in paragraph 5.1 of this Schedule 4 is as set out in this paragraph 5 of this Schedule 4.
- 5.6. 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.
- 5.7. The terms of the Agreement shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

- 6.1. Risk in Goods shall pass to the Client on completion of unloading the Goods at the agreed delivery location.
- 6.2. Title to Goods shall only pass to the Client once the Supplier receives payment in full (in cash or cleared funds) for them.
- 6.3. 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 16.2(d) of the Master Services Agreement; and
 - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4. 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 paragraph 6.3 of this Schedule 4, and to recover any Goods in which property has not passed to the Client.

7. Cancellation

Notwithstanding paragraph 2.4 of this Schedule 4, once an order for Goods has been accepted by the Supplier, no order may be cancelled by the Client except with the agreement in writing of the Supplier and on terms that the Client 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.