

THIS SOFTWARE-AS-A-SERVICE AGREEMENT

Supplier and Client, as defined below (each a “Party” and together, the “Parties”). In the event the Client starts to use the Services, use of such Service shall effectively amount to agreement and acceptance of the terms and conditions in this agreement.

Background

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis.
- (B) The Client wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide and the Client has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

Interpretation

1. The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those employees, agents and independent contractors of the Client who are authorised by the Client to use the Services and the Documentation, as further described in clause 2.2(c).

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

Change of Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5 or clause 11.6.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Client: the client purchasing services from the Supplier from the Marketplace.

Client Data: the data inputted by the Client, Authorised Users, or the Supplier on the Client's behalf for the purpose of using the Services or facilitating the Client's use of the Services.

Data Protection Legislation:

- a) 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.
- b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Documentation: any documents made available to the Client by the Supplier from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the last date of signature to this agreement.

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

Initial Subscription Term: the initial term of this agreement as set out in the Order Form.

Marketplace: the Microsoft Marketplace.

Normal Business Hours: 9:00am to 5:00pm local UK time, each Business Day.

Order Form: the order form setting out the particulars of the Services and Subscription Fees.

Renewal Period: the period described in clause 14.1.

Services: the subscription services provided by the Supplier to the Client under this agreement as more fully set out in the Order Form (if applicable) including the support terms as set out in Schedule 1.

Software: the online software applications provided by the Supplier as part of the Services.

Subscription Fees: the subscription fees payable by the Client to the Supplier for the User Subscriptions, as set out in Order Form (if applicable).

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Supplier: CLOUD CONTRACTS 365 LTD incorporated and registered in England and Wales with company number 14888628 whose registered office is at The Lodge On The Common London Road, Tunbridge Wells, TN2 5BF,

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications

Regulations 2003 (SI 2003/2426) as amended.

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

User Subscriptions: the user subscriptions purchased by the Client pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

- 1.1 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.2 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 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 it is in force as at the date of this agreement.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.8 A reference to writing or written includes e-mail.

- 1.9 References to clauses are to the clauses of this agreement.
2. User subscriptions
- 2.1 Subject to the Client purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Client a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Client's internal business operations. For the avoidance of any doubt, there are no permitted resale activities of any kind including use by any third parties (together the "Resale Activities"). Any Resale Activities may only be permitted if the Supplier has allowed for this and the Client agrees that such Resale Activity will incur additional charges, such charges and Resale Activity use shall be set out in the Order Form if permitted by the Supplier.
- 2.2 In relation to the Authorised Users, the Client undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time (if there is a cap of Authorised Users as directed by the Supplier to the Client);
 - (b) 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 Services and/or Documentation;
 - (c) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
 - (d) it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Client's data processing facilities to audit compliance with this agreement. Each 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 2.2(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 2.2(d) reveal that the Client has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Client shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form within 15 days of the date of the relevant audit.

2.3 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, 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, colour, religious belief, sexual orientation, disability; 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.

2.4 The Client shall not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:

(i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

(b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

(c) use the Services and/or Documentation to provide services to third parties; or

- (d) subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
 - (f) introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.
- 2.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 The rights provided under this clause 2 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.
3. Not used Additional user subscriptions
- 3.1 Subject to clause 3.2 and clause 3.3, the Client may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order Form (if applicable) and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2 If the Client wishes to purchase additional User Subscriptions, the Client shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Client with approval or rejection of the request. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 2 day(s) of its approval of the Client's request.
- 3.3 If the Supplier approves the Client's request to purchase additional User Subscriptions, the Client shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Order Form and, if such additional User Subscriptions are purchased by the Client part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
4. Services
- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Client on and subject to the terms of this agreement.

- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 9:00am to 5:00pm (UK local time), except for:
- (a) planned maintenance carried out during the maintenance window of 9:00am to 5:00pm (UK local time) on a Business Day; and
 - (b) unscheduled maintenance performed outside of business hours, provided that the Supplier has used reasonable endeavours to give the Client at least 6 business hours' notice in advance.
5. Client data
- 5.1 The Client shall own all right, title and interest in and to all of the Client Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.
- 5.2 In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy against the Supplier shall be for the Supplier to use commercially reasonable endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by the Supplier if the Supplier has back-up facilities. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Client Data maintenance and back-up for which it shall remain fully liable under clause 5.8).
- 5.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 5.4 The parties acknowledge that:
- (a) if the Supplier processes any personal data on the Client's behalf when performing its obligations under this agreement, the Client is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation.
 - (b) the personal data may be transferred or stored outside the EEA or the country where the Client and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this agreement.
- 5.5 Without prejudice to the generality of clause 5.3, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Client's behalf.

- 5.6 Without prejudice to the generality of clause 5.3, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that personal data only on the documented written instructions of the Client unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (Applicable Laws). Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly 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;
 - (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - (i) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
 - (c) assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (d) notify the Client without undue delay on becoming aware of a personal data breach;
 - (e) at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
 - (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

- 5.7 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 5.8 The Client consents to the Supplier appointing third-party processors of personal data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 5 and in either case which the Supplier reflects and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5.
- 5.9 Either party may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
6. Third party providers
- 6.1 The Client acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not the Supplier. The Supplier recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.
7. Supplier's obligations

- 7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.
- 7.3 The Supplier:
- (a) does not warrant that:
 - (i) the Client's use of the Services will be uninterrupted or error-free;
 - (ii) that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements; or the Software or the Services will be free from Vulnerabilities.
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 7.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
8. Client's obligations
- 8.1 The Client shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Client Data, security access information and configuration services;

- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Client responsibilities set out in this agreement 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 agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.

9. Charges and payment

9.1 The Client shall pay the Subscription Fees and support fees to the Supplier for the User Subscriptions in accordance with this clause 9 and the Order Form.

9.2 The Client shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Client provides:

- (a) its credit card details to the Supplier, the Client hereby authorises the Supplier to bill such credit card:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and

- (ii) subject to clause 14.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
 - (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Client:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,
- and the Client shall pay each invoice within 30 days after the date of such invoice.
- 9.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- (a) the Supplier may, without liability to the Client, disable the Client's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% per annum above the Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
 - (b) are, subject to clause 13.3(b), non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.5 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 and the support fees payable at the start of each Renewal Period upon 30 days' prior notice to the Client and the Order Form shall be deemed to have been amended accordingly.
10. Proprietary rights
- 10.1 The Client acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software, the Services and the Documentation. Except as expressly stated herein, this agreement does not

grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10.2 The Supplier confirms that it has all the rights in relation to the Software, Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

11. Confidentiality

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any act or omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

(d) is independently developed by the receiving party, which independent development can be shown by written evidence.

11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.5 The Client acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

11.6 The Supplier acknowledges that the Client Data is the Confidential Information of the Client.

- 11.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.8 The above provisions of this clause 11 shall survive termination of this agreement, however arising.
12. Indemnity
- 12.1 The Client shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Services and/or Documentation, provided that:
- (a) the Client is given prompt notice of any such claim;
 - (b) the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
 - (c) the Client is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Client, its officers, directors and employees against any claim that the Client's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
- (a) the Supplier is given prompt notice of any such claim;
 - (b) the Client provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by the Supplier; or
 - (c) the Client's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5 The foregoing and clause 13.3(b) state the Client's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

WARNING: you are strongly advised to read this clause.

13.1 Except as expressly and specifically provided in this agreement:

- (a) the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, 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 Services, or any actions taken by the Supplier at the Client's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Services and the Documentation are provided to the Client on an "as is" basis.

13.2 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1 and clause 13.2:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement;

and

- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to 125% of the Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14. Term and termination

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.

14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

- (c) 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, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;

- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal

- for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(c) to clause 14.2(i) (inclusive); or
 - (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate and the Client shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Client Data in its possession in accordance with clause 5.6(c), unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Client of the

then most recent back-up of the Client Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Client Data; and

(d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. Force majeure

The Supplier shall have no liability to the Client under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Client is notified of such an event and its expected duration.

16. Conflict

If there is an inconsistency between any of the provisions in the main body of this agreement and the Order Form, the provisions of the Order Form shall prevail.

17. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. Waiver

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

19. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

20.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

20.2 If any provision or part-provision of this agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire agreement

21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22. Assignment

22.1 The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

23. No partnership or agency

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any

obligation or liability and the exercise of any right or power).

24. Third party rights

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. Notices

25.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.

25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

26. Governing law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

27. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 SUPPORT SERVICES

1. Interpretation
 - 1.1 Except as defined in this SCHEDULE 1, capitalised terms shall have the meanings given to them in the agreement.
2. Support Services
 - 2.1 The Supplier will provide the support services (“Support Services”) in accordance with the Order Form and the terms of the agreement with all due care, skill and ability during the Subscription Term unless earlier terminated for any reason.
 - 2.2 The Supplier shall provide the Support Services in accordance with the service level arrangements as stated in the Order Form (or as otherwise advised to the Client by the Supplier).
 - 2.3 The Client shall remain responsible for the use of the Support Services under its control including any use by third parties that Client has authorised to use the Support Services.
 - 2.4 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 Support Services).
 - 2.5 The Client shall not provide the Support Services to third parties unless otherwise indicated in the Order Form or as otherwise agreed by the Supplier in writing.
 - 2.6 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 Support 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.

- 2.7 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 Support Services 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 Support 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 a change request.
- 2.8 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.
- 2.9 The Support 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.
- 2.10 The Supplier may suspend, revoke or limit use of the Support 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 Support 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 Support Services. If the Client fail to take such actions within a reasonable time, the Supplier may terminate the applicable Support Services.
- 2.11 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 Support 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 Support 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 Support 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;
- (c) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;
- (d) where agreed, following written request by the Client, undertake a regular account review, to discuss the Client's service needs and ensure that the agreement is in alignment with its needs;
- (e) use commercially reasonable endeavours to follow the instructions of the Client and will remain courteous during any communications with Client personnel; and
- (f) provide the Client with reasonable co-operation in relation to the agreement.

3.3 The Supplier shall be under no obligation to provide the Support Services to the Client in the following circumstances (unless specified under the Order Form):

- (a) unauthorised use of the Services by the Client or use otherwise than in accordance with the agreement;
- (b) providing the Support 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 Support 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 Order Form or as otherwise set out in the agreement):

(a) permit the Supplier to install the current version of software required to provide the Support 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 with reasonable 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 Support 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 Support Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images; and/or

(d) promotes unlawful violence;

(e) is discriminatory based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment;

(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.

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 Support 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 it will comply with and use the Support 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.
- 6.2 Unless otherwise set out in the relevant Order Form, the Client is responsible for securing and backing up its data.
- 6.3 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 Support Services .
- 6.4 The Supplier does not warrant uninterrupted or error-free operation of the Support Services. Unless otherwise agreed in writing, the Support Services and Products are designed, manufactured and intended for low-risk activities.
- 6.5 The Client acknowledges and accepts that where the Services are provided by Microsoft or a third party and that any representations or warranties regarding such use are set out in the applicable third party terms. The Supplier has no responsibility for the suitability, availability, functionality or otherwise regarding the Support Services .
- 6.6 The Supplier warrants that it shall perform the Support 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 Support Services 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 Support Services. 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.
- 6.7 The warranties provided in this Schedule 1 are the exclusive warranties from the Supplier in relation to the Support Services.

7. Limitation of Liability

- 7.1 Subject to 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 Support 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 Support 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 Support Services, or any actions taken by the Supplier at the Client's direction.