

Infinity Group

Master Services Agreement



MASTER SERVICES AGREEMENT

BACKGROUND

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

AGREED TERMS

1. INTERPRETATION

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

Access Services: means the access service described in the Statement of Work to be performed by the Supplier in accordance with this MSA and the Access Services Supplemental Terms.

Acceptance Criteria: means the acceptance criteria as specified in Clause 10.2 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, Supplemental Terms or as agreed between the Parties, to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

Activation: means making the relevant Service available for use and 'Activated' shall be construed accordingly.

Activation Charges: mean those amounts payable by Customer to the Supplier for the connection and Activation of a Service as set out in the relevant Statement of Work.

Agreement: means this MSA along with the Statement of Work(s), any applicable Supplemental Terms, the Licence Agreement(s), the CSP Agreement, the Privacy Policy 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, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and

- 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:

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

Assumptions: has the meaning given in Clause 8.4.

Authorised Users: those employees and independent contractors of the Customer who are entitled to use the Software and/or Third Party Services under the Agreement.

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 the 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 Customers or any of its agents or contractors.

Change Order: means any request to alter the Services pursuant to the Agreement as set out in Clause 16.

Cloud Services: means a service or application (which may be provided by a Third Party Supplier) that is outside of a Customer's on-premises infrastructure described in the Statement of Work to be provided by the Supplier in accordance with this MSA and the Cloud Service Supplemental Terms.

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 the 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 MSA, as set out in the Statement of Work.

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

Customer: the customer as identified in the Statement of Work.

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

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

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

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

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

CSP Agreement: the CSP customer agreement, which is a direct agreement between the Customer 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.

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).

Deposit: means the deposit amount (if any) set out in the Statement of Work.

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.

Dispute Resolution Procedure: the procedure described in Clause 31.

Equipment: means all and any goods and equipment, including but not limited to all hardware, software, consumables, modems, modem configurations, lines and cabling provided and/or installed by the Supplier in connection with supply of the Services as set out in the Statement of Work which for the avoidance of doubt shall at all times remain the property of the Supplier until paid for in full.

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

Fair Usage Policy: any fair usage policy set out in the Statement of Work.

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

Force Majeure: any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, riot, computer viruses and malware, epidemics, pandemics, civil commotion, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lock out of the party's own staff shall not entitle them to claim that to be a force majeure event.

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

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 Customer.

Hosted Telephony Services: means the hosted telephony services described in the Statement of Work to be performed by the Supplier in accordance with this MSA and the Hosted Telephony Services Supplemental Terms.

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 Customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.

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

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

Lease Rental: means the lease rental services described in the Statement of Work to be performed by the Seller in accordance with this MSA and the Lease Rental Supplemental Terms.

Licence Agreement: means all licence agreements that may have to be entered into by the Supplier and/or the Customer in respect of Third Party Services used. Such Licence Agreement terms shall be set out in the relevant Statement of Work.

Local System Components means equipment supplied by the Customer 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.

Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a new version.

Maintenance Services: means the maintenance services described in the Statement of Work to be performed by the Supplier in accordance with this MSA and the Maintenance Services Supplemental Terms.

Managed Services: the Access Services, Hosted Telephony Service, other hosting and support service, Maintenance Services, Network Services and Cloud Services described in the Statement of Work to be performed by the Supplier in accordance with the Agreement.

Minimum Term: 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.

Minimum Users: means any minimum number of Authorised Users stated in the Statement of Work if applicable.

MSA: the terms and conditions set out in this document.

Normal Business Hours: 8:30 am to 5.30 pm local UK time on Business Days.

Network Services: means the network service described in the Statement of Work to be performed by the Supplier in accordance with this MSA and the Network Services Supplemental Terms.

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 the Agreement or parties.

Privacy Policy: the Supplier's privacy policy as set out at <https://www.infinitygroup.co.uk/privacy-policy-msa/> as may be updated from time to time.

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

Purpose: the purposes for which the Customer 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.

Recurring Charges: means those amounts including Fees payable by Customer to the Supplier on a recurring basis for provision of the Services as set out in the relevant Statement of Work and excludes installation, set-up or other one-off charges.

Relief Events: the following events:

- (a) any failure by the Customer to comply with its obligations under the 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 Customer, 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 Customer 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 the Agreement; or
- (d) any of the causes or events set out in Clause 12.7.

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

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 Customer is not able to access the Services due to planned maintenance. The Supplier may schedule system downtime, with prior agreement of the Customer. Scheduled Downtime periods do not count against the service level calculation detailed in a Statement of Work.

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

Services: means the use of the Managed Services and/or the Professional Services including consulting, advisory, integration, technical services or Lease Rental 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 of Activation of the Services, the date on which the Supplier completes installation of the Equipment or the date the Services otherwise commence as set out in the Statement of Work or as otherwise agreed between the Parties in writing.

Software: means the software set out in the applicable Statement of Work.

Statement of Work: means the service proposal, order form, statement of work and any other services specification for the Services as set out under separate cover and agreed between the Parties.

Subscription Services: means a right to use the Services and any Third Party Services for a defined term.

Subsequent Term: means a period of equivalent length to the Minimum Term set out in the Statement of Work or in the absence of such, twelve (12) months, commencing on the last day of the Minimum Term or previous Subsequent Term, as the case may be.

Supplemental Terms: where the Customer's Statement of Work indicates a SC Code in respect of any Services to be supplied (including Network Services, Supply of Equipment, Hosted Telephony Services, Maintenance Services, Access Services, Cloud Services and TechPlan Services and Lease Rental Services) then, in addition to this MSA, the applicable Supplemental Terms shall apply between the Supplier and the Customer in relation to that part of the Statement of Work.

Supplier: Infinity Technology Solutions Limited incorporated and registered in England and Wales with company number 04330595 whose registered office The Coach House Spencer Mews, Camden Road, Tunbridge Wells, Kent, TN1 2PY.

Supplier Materials: means all documentation, materials, hardware, software, modems, modem configurations, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer in connection with supply of the Services which at all times remain the property of the Supplier.

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

TechPlan Services: means the TechPlan Services described in the Statement of Work to be performed by the Supplier in accordance with this MSA and the Cloud Services Supplemental Terms.

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

Third Party Services: any services, goods, code or software programs written or provided by Third Party Suppliers which are used by the Customer during the provision of the Services.

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

Usage: refers to the Services that are billed based on actual usage.

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

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

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

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

Variations: any variations made through the Variation Agreement, a template of which is found [here](#).

- 1.2 Clause, and paragraph headings shall not affect the interpretation of this MSA.
- 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 MSA.
- 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 this MSA, the Supplemental Terms, the Statement of Work and the CSP Agreement / Licence Agreement (including any changes or variations to the MSA, the Statement of Work, and the CSP Agreement/ Licence Agreement), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
 - (a) the Variations;
 - (b) the Statement of Work;
 - (c) the CSP Agreement / Licence Agreements, to the extent applicable to the Services;
 - (d) the Supplemental Terms; and
 - (e) the MSA.

2. PROVISION OF SERVICES

- 2.1 The Agreement sets out the terms and conditions under which the Supplier shall provide to the Customer the Services.
- 2.2 The Agreement shall (i) be in substitution for any prior oral or other prior arrangements between the Supplier and the Customer in connection with the purchase of the relevant Services; and (ii) prevail over any of the Customer'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.

- 2.3 Subject to Clause 26.4, no addition to, variation of or other amendment or purported amendment to any Statement of Work or this MSA 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.
- 2.4 Any quotation or proposal given by the Supplier is for budgetary purposes until financial and technical validation and shall not constitute an offer. For:
- (i) Managed Services or Professional Services, it is only valid for a period of thirty (30) days; and/or
 - (ii) the supply of Equipment, it is only valid for a period of fourteen (14) days,
- 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.
- 2.5 Each Statement of Work is subject to acceptance by the Supplier in its absolute discretion and, without limiting the foregoing, acceptance shall be subject to any or all of the following:
- (a) a site survey of the Customer's Site(s) being carried out and acceptable to the Supplier in its absolute discretion;
 - (b) payment by Customer in cleared funds of the Deposit (if applicable);
 - (c) the provision by Customer of financial and credit information satisfactory to the Supplier; and
 - (d) notification to the Supplier of receipt of all required third party authorisations, licences, consents or approvals, including for finance, and any applicable planning, landlord, access or wayleave consents.
- 2.6 The Supplier may, at any time, require the Customer to pay a Deposit and / or to procure that a parent company or related company guarantees the payment of any Fees due under the Agreement, including on account of any expenses reasonably to be incurred in supply of the Services in accordance with Clause 8.8(a). The Customer agrees to enter into and / or procure the execution of any agreement or deed reasonably required for any such purpose. Deposits shall not attract interest.
- 2.7 Should the site survey of the Customer's Site(s) prove, in the Supplier's absolute discretion, to be unacceptable, the Supplier reserves the right either to:
- (a) withdraw its acceptance of the Statement of Work and refund any Deposit paid; or
 - (b) to amend the Services and Fees set out on the Statement of Work in accordance with Clause 16.

- 2.8 Once a date has been set for Activation of the Services or installation of any Equipment necessary for Activation of the Services, the Supplier will issue an email to the Customer's representative stated on the Statement of Work.

3. MANAGED SERVICES

- 3.1 The Supplier will provide the Managed Services in accordance with the Statement of Work and the terms of this MSA with all due care, skill and ability during the Minimum Term and a Subsequent Term (if applicable) unless earlier terminated for any reason.
- 3.2 The Supplier shall provide the Managed Services in accordance with any Service Level Arrangements stated in the Statement of Work.
- 3.3 The Customer shall remain responsible for the use of the Managed Services under its control.
- 3.4 The Customer 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 Customer 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 Customer to alleviate the situation as quickly as possible. The Parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 3.5 The Customer shall not provide the Managed Services to third parties without the prior written consent of the Supplier.
- 3.6 The Customer 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 Customer 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.
- 3.7 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 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 Customer and the Parties shall follow the Change Order.

- 3.8 If the Supplier breaches its obligations in Clause 3.1, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.

4. RESPONSIBILITIES OF SUPPLIER

4.1 The Supplier shall:

- (a) provide and Activate the Services in accordance with the terms of the Agreement;
- (b) use its commercially reasonable endeavours to complete any Deliverables set out under any Statement of Work;
- (c) commit sufficient resources to the provision of the Services to enable their delivery in accordance with this MSA and the 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 MSA 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 Customer promptly if the Supplier is unable to comply with any of the terms of this MSA, any of the CSP Agreement / 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 Customer Sites and which have been communicated to it a week prior to the Services commencing, where the Supplier is required to be on such Customer Sites for the provision of the Services.

- 4.2 The Supplier shall co-operate with the Customer in all matters relating to the Services and shall appoint a Representative ("**Supplier Representative**"), as the contact throughout the Services.
- 4.3 The Customer confirms that the Supplier may employ sub-contractors without seeking the prior consent of the Customer. Notwithstanding the foregoing, the Supplier shall at all times be responsible for and liable in respect of the performance of all obligations under the 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.
- 4.4 For the avoidance of doubt, the Supplier shall only be held liable to the extent permitted under the respective CSP Agreement or Licence Agreements for the actions or omissions of any Third Party Suppliers and shall not be held liable for the actions and or omissions of any other third party (including Third Party Suppliers) including but not limited to Microsoft (whereby the Customer will have a direct contract in place with Microsoft through CSP Agreement).
- 4.5 The Supplier shall provide reasonable notice to the Customer of any change in its senior personnel engaged as part of the Services. Where relevant, the Supplier shall replace any senior personnel who are removed with another appropriately skilled person.
- 4.6 In relation to the Managed Services specifically and notwithstanding the Supplier's obligations under Clause 4.1, 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) undertake a regular account review if requested by the Customer, to discuss the Customer'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 Customer and will remain courteous during any communications with Customer personnel; and
 - (f) provide the Customer with reasonable co-operation in relation to the Agreement.

- 4.7 The Supplier shall be under no obligation to provide the Managed Services to the Customer in the following circumstances (unless specified under the Statement of Work);
- (a) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
 - (b) providing any other services not covered herein;
 - (c) training; and
 - (d) providing the Managed Services to the Customer where such support would have been unnecessary if the Customer had implemented update(s) and upgrade(s) supplied or offered to the Customer.

5. RESPONSIBILITIES OF CUSTOMER

- 5.1 To the extent that the Supplier requires access to the Customer Site(s) to perform the Services, the Customer 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 Customer (including those relating to security and health and safety) as may be notified to the Supplier in writing from time to time.
- 5.2 The Customer shall co-operate with the Supplier in all matters relating to the Services and shall appoint a minimum of two Representatives ("**Customer Representatives**"), who shall have authority to commit the Customer on all matters relating to the relevant Service.
- 5.3 The Customer agrees and acknowledges the terms of the applicable Licence Agreements and the terms of the CSP Agreement shall form part of the Agreement. For the avoidance of doubt, in the event the applicable Licence Agreements and/or the CSP Agreement is not applicable to the Services being received or delivered by the Supplier to the Customer under the Agreement, such agreements shall not apply.
- 5.4 The Customer shall:
- (a) 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;
 - (b) co-operate with the Supplier in all matters relating to the Services as reasonably requested by the Supplier;
 - (c) adhere to the dates scheduled for provision of Services by the Supplier to the Customer as stated in the applicable Statement of Work or otherwise agreed between the Parties in writing. In the event the Customer wishes to reschedule

or cancel the dates for the provision of Services, liquidated damages ("**Liquidated Damages**") will become payable from the Customer to the Supplier on the following basis:

- (i) if dates are changed or cancelled at the Customer's request more than fourteen (14) days before the scheduled start date no Liquidated Damages are payable;
 - (ii) if dates are changed or cancelled between seven (7) days and fourteen (14) days before the scheduled start date Liquidated Damages 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 Liquidated Damages equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable;
- (d) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
 - (e) allow the Supplier or its designated subcontractors and third parties, global admin access to the Customer's relevant servers and networking systems for the duration of the Agreement;
 - (f) 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) for a minimum of twelve (12) months from project completion date;
 - (g) 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 Customer the amounts directly and the Customer shall follow the payment terms in this MSA;
 - (h) provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
 - (i) provide all information and make available all resources as reasonably requested by Supplier in the execution of its obligations under the Agreement;
 - (j) use all reasonable efforts to follow the reasonable instructions of Supplier support personnel with respect to the resolution of defects;
 - (k) 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;

- (l) adhere to any Fair Usage Policy;
- (m) 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 Customer (or which is in the possession of the Customer) then it shall where it is able to do so grant to 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; and
- (n) not use or access or allow use or access to any Supplier Materials and/or Services supplied under the Statement of Work:
 - (i) by any third party; or
 - (ii) in connection with the carrying out of any fraudulent, criminal, or any other illegal activity; or
 - (iii) to send, knowingly receive, upload, download or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing or in breach of copyright, confidence, privacy or any other rights; or
 - (iv) to cause nuisance, annoyance or needless anxiety; or
 - (v) to send or provide or, knowingly receive responses to, any spam or unsolicited advertising or promotional material; or
 - (vi) to knowingly or recklessly transmit any electronic material (including viruses) which may cause or is likely to cause detriment or harm in any degree to computer systems owned by the Supplier or other Internet users; or
 - (vii) in a manner which restricts or inhibits any other user from using or enjoying the Supplier products or services; or
 - (viii) to utilise excessive amounts of bandwidth exceeding the contention ratio guarantee of the product and not including 1:1 services (including repeatedly engaging site-local scripts or similar behaviour); and

in respect of any such illegal, fraudulent or unauthorised use of the Services, the Customer will notify the Supplier immediately it becomes aware of such. On receipt of such a notice, the Supplier shall use reasonable efforts to prevent such unauthorised use and reserves the right to suspend the Services or any part thereof until such unauthorised use is ceased.

5.5 The Customer shall (unless otherwise specified in the Statement of Work or as otherwise set out in the Agreement):

- (a) use the Services only for lawful purposes and in accordance with the Agreement;

- (b) keep secure from third parties any passwords issued to the Customer by the Supplier;
 - (c) fully virus-check all data supplied to the Supplier pursuant to the Agreement;
 - (d) 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;
 - (e) provide the Supplier at least seven (7) Business Days' notice in advance of any intention or move to change when applicable Customer-side Equipment or Customer'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 Customer's systems to an acceptable state for continued support, and will charge accordingly at its then standard charging rate;
 - (f) comply with all applicable laws and regulations with respect to its activities under the Agreement; and
 - (g) carry out all other Customer responsibilities set out in the Agreement and the Statement of Work in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, the Supplier may adjust any timetable or delivery schedule set out in the Agreement as reasonably necessary.
- 5.6 In the event that the Customer 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 Customer 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 applicable Statement of Work and/or Service Level Arrangements as a direct result of the Customer (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.
- 5.7 In the event that the Customer 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 Customer 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 applicable Statement of Work and/or Service Level Arrangements as a direct result of the Customer (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.

6. PROJECT ORGANISATION

- 6.1 If requested in writing by the Customer or specified in the Statement of Work, the Customer Representatives and the Supplier Representative shall have regular meetings to monitor and review the performance of the Agreement, to discuss any changes proposed in accordance with Clause 16 and to discuss the Service Level Arrangements.
- 6.2 Before each meeting, the Customer 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.

7. USER SUBSCRIPTIONS

- 7.1 The Supplier grants to the Customer 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 Customer's internal business operations.
- 7.2 In relation to the Authorised Users, the Customer 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 a secure password or other biometric authentication for their use of the Third Party Services and/or Subscription Services (as the case may be) and where a password is used, ensure that such password shall be changed no less frequently than monthly and that each Authorised User shall keep their password confidential; and
 - (c) if it materialises that the Customer 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 Customer 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.
- 7.3 The Customer may, from time to time during any Term:

- (a) request that the User Subscriptions decrease providing it does not decrease below the Minimum Users unless in accordance with Clause 7.4 or as otherwise agreed by the Supplier or;
 - (b) request Additional Users 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 Customer's request for additional User Subscriptions and grant or refuse the request (in its sole discretion).
 - (ii) If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within thirty (30) days of the date of the Supplier's invoice, pay to the Supplier the relevant Fees for such additional User Subscriptions at the relevant price at the time of the request and, if such additional User Subscriptions are purchased by the Customer part way through the Term, such fees shall be pro-rated for the remainder of the Term.
- 7.4 Unless otherwise set out in the Statement of Work, the Supplier may adjust the Minimum Users annually on the anniversary of the Services Commencement Date to reflect any adjustments made to the User Subscriptions in accordance with this Clause 7 over the previous twelve (12) months or as otherwise agreed between the Parties.

8. PRICE AND PAYMENT

- 8.1 The Customer 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 Usage, such Fees shall be variable upon the terms set out in the Statement of Work.
- 8.2 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 MSA. For the avoidance of doubt, in the event the Customer delays Activation (which falls outside of the Liquidated Damages) or has not conducted its Acceptance Testing in accordance with Clause 10, the Supplier may charge the Customer for such delays in accordance with its Rates.
- 8.3 Clause 8.5 shall apply if the Services are to be provided on a time-and-materials basis. Clause 8.7 shall apply if the Services are to be provided on a Usage basis. The remainder of this Clause 8 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.
- 8.4 Where a Fee has been quoted, this is a best estimate based on the information given to the Supplier by the Customer 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 Customer 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.

- 8.5 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 on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside Normal Business Hours;
 - (c) the Supplier shall complete the relevant time recording systems to calculate the Fees for each invoice charged on a time and materials basis.
- 8.6 The Supplier shall invoice the Fees in accordance with the payment intervals stated in the Statement of Work. Save where other payment terms are set out in the Statement of Work, all Fees will be payable by direct debit. The Customer shall provide the Supplier with valid up-to-date and complete payment information and direct debit authority.
- 8.7 The Fees exclude:
- (a) (unless otherwise agreed and set out in the Statement of Work), the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier or its subcontractors in providing the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Customer for the Services ("**Expenses**"). The Supplier shall obtain the Customer's prior written approval before incurring any such expense, material or service exceeding a total cost of fifteen hundred pounds (£1,500) in the aggregate per day and shall be payable by the Customer in accordance with this Clause 8; and
 - (b) unless otherwise set out in the Statement of Work, the costs of packaging, insurance and transport of the Equipment.
- 8.8 Where Recurring Charges as set out in the Statement of Work are payable:
- (a) all Recurring Charges shall be due immediately on each invoice date which at the Supplier's absolute discretion, can be prepared and dated on delivery of Equipment, or monthly, quarterly or annually (the "**Payment Period**") in advance or arrears depending on the circumstances and nature of the supply of Equipment and/or Services ordered. Where fixed Recurring Charges are payable, the Customer agrees that the first two (2) months' charges will be payable in

advance in addition to the pro-rata monthly charge. Usage based Services will be charged in arrears.

- (b) Recurring Charges shall accrue daily with effect from the date of Activation and shall be invoiced in advance at the frequency specified on the Statement of Work; and
 - (c) the first instalment of Recurring Charges will be made up of (i) a proportionate charge in respect of the period from the scheduled date of Activation to the end of the month in which Activation is scheduled plus (ii) the full amount due for the next Payment Period beginning on the first day of the month next following the month of the date scheduled for Activation. Payment Periods shall always start on the first day of a month.
- 8.9 The Customer shall ensure that it has sufficient funds available for collection of each direct debit payment and shall not cancel such direct debit instruction or take or fail to take any other action that results in payment failure.
- 8.10 The Customer 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. The Customer shall pay each undisputed invoice for the Fees in full and cleared funds (without deduction or set-off) in advance unless otherwise agreed or set out in this MSA (Expenses shall be invoiced separately) of providing the Services.
- 8.11 All payments by the Customer 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 Customer in writing.
- 8.12 All amounts stated are gross amounts but exclusive of VAT or other sales tax which shall be paid by the Customer, if applicable, at the then prevailing rate subject to receipt of a valid VAT invoice or other sales tax invoice.
- 8.13 Should the Customer 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.
- 8.14 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 Customer 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 Customer interest on the overdue amount at the rate of four percent (4%) per annum above the base lending rate of Barclays Bank plc 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 Customer shall pay the interest together with the overdue amount.

- 8.15 The Customer shall not be able to dispute any amounts which have been paid by the Customer after a period of three (3) months has elapsed from the date of invoice.
- 8.16 The Supplier shall not be obliged to provide any of the Services 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.
- 8.17 Subject to Clause 8.19 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 twelve (12) month period.
- 8.18 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 Party Suppliers upon reasonable notice and in line with the terms of the Licence Agreement, and/or the CSP Agreement.
- 8.19 Notwithstanding and subject to Clauses 8.17 and 8.18, the Supplier reserves the right, on giving the Customer thirty (30) days' notice, to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. If the Customer does not agree with this increase, then they may terminate this MSA 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 Customer is deemed to have agreed to the amendment to the Fees.

9. WARRANTIES AND SERVICE LEVELS

- 9.1 The Customer warrants that:
 - (a) it has the full capacity and authority to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Customer;
 - (b) it has the authority to grant any rights to be granted to the Supplier under the 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 the Agreement; and
 - (d) 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 Customer 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.

9.2 The Supplier warrants and represents that:

- (a) it has the full capacity and authority to enter into and perform the Agreement and that the 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 the Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under the Agreement including for the Customer's use and receipt of the Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- (c) it will comply with all applicable laws in performing its obligations under the Agreement; and
- (d) the Customer's use of any Supplier Materials and/or third-party materials, including any materials supplied by the Supplier to the Customer, shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party.

9.3 Except for any warranties and service levels expressly set forth in this MSA, the Services are provided on an "as is" basis, and Customer'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.

9.4 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 Customer registering and reporting 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.

9.5 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 Customer or Authorised User, (ii) the Customer's breach of the Agreement, (iii) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Customer, or (iv) any third party action in response to an act or omission of the Customer or any person given access

to the Service by the Customer (including third party hosted software vendors), then the Supplier may recover from the Customer 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.

- 9.6 Unless otherwise agreed or set out in the Statement of Work (as forming part of the Service) if the Customer accesses the Services through the public Internet or through a private circuit provisioned by a bandwidth provider of the Customer's choice, the Customer 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.
- 9.7 If the Customer moves from one Customer Site to another site or makes changes to any Customer Site or opens a new location to be added to the Customer Sites, the Customer must notify the Supplier in advance. The Supplier may need to carry out an inspection of any cabling and advise the Customer 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 quotation if it is to provide additional resources or services in the case of any change at the Customer Sites or new Customer Sites for including as part of the Fees.
- 9.8 The Supplier will request approval from the Customer's Representatives before making any significant changes to the Services. The Supplier will arrange any Scheduled Downtime in advance with the Customers 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.
- 9.9 Temporary changes may be made to the network or the technical specification of a Service from time to time for operational or technical reasons. If these changes will be materially detrimental to the Service, the Supplier will use reasonable endeavours to inform the Customer in advance.
- 9.10 For the purpose of providing new installations, updating facilities and general maintenance, Scheduled Downtime will occur from time to time and:
 - (a) the Supplier will use reasonable endeavours to provide at least five (5) Business Days' notice of any scheduled maintenance; and
 - (b) where emergency maintenance is required, the Supplier will give as much notice as is reasonably practicable and will explain why the maintenance is necessary and why short notice has to be given. On rare occasions it may only be possible to give this notification after the emergency maintenance has taken place.

- 9.11 The Supplier will carry out network management routines to test the operations and functions of the relevant Services from time to time, notifying the Customer in advance.
- 9.12 The Supplier reserves the right to take any action that it perceives necessary to protect the Customer's systems even though this may impact on the Customer's business activities. The Supplier will make reasonable endeavors to inform the Customer by telephone or email in advance of such action, but such action will not be dependent on such notification having been given or acknowledged.
- 9.13 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).
- 9.14 The Supplier shall not in any circumstances be liable under its obligations in this Clause 9 if it can demonstrate that any failure of the Services was caused or contributed to by any Relief Event.
- 9.15 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error-free.
- 9.16 The Customer hereby warrants that it has not been induced to enter into the 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.

10. ACCEPTANCE OF THE PROFESSIONAL SERVICES

- 10.1 The relevant Statement of Work shall specify the Deliverables that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.
- 10.2 In relation to any Acceptance Testing:
- (a) the Customer 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 Customer determines that a Deliverable does not conform to the Acceptance Criteria, the Customer 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 Customer 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 Clause (a)) if any of the Deliverables do not conform to the Acceptance Criteria.

In the event that Customer 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 Conditions such Deliverable, shall be deemed accepted as if the Customer had issued a written acceptance thereof. Once the Deliverable has been accepted by the Customer and payment has been settled in accordance with Clause 8, the Deliverable shall become the property of the Customer. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 10.2(c) below.

- (c) if:
 - (i) the Customer does not provide any written comments in the initial period described in Clause 10.2(a) above; or
 - (ii) if the Deliverable or Services are found to conform with the Statement of Work; or
 - (iii) if the Customer fails to, or delays to meet any of its obligations under the Statement of Work or the Agreement,

then in each case the Service or Deliverable shall be deemed accepted. In respect of acceptance pursuant to Clauses 10.2(c)(i) and 10.2(c)(ii) as from the date of the notification by the Supplier pursuant to Clause 10.2(a), and in respect of acceptance pursuant to Clause 10.2(c)(iii), with effect from the expiry of the period of ninety (90) days or such other period as is agreed from the date of the applicable Statement of Work ("**Acceptance Date**").

- (d) If there are any non-conformities within any Deliverable, which have been highlighted by Customer or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Customer 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 Order (as defined in Clause 16 or attributable to the Customer's acts or omissions including inadequate Acceptance Testing) the Supplier shall (without prejudice to the Customer'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 Customer 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 Customer, any amounts paid or payable by Customer to

Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied.

11. DATA PROTECTION

- 11.1 The Supplier shall promptly notify the Customer in writing of any loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, the Supplier shall use commercially reasonable endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Customer Data caused by any third party.
- 11.2 For the purposes of this Clause 11, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK Data Protection Legislation.
- 11.3 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws and the Privacy Policy. This Clause 11 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.
- 11.4 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 Customer.
- 11.5 Without prejudice to the generality of Clause 11.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier for the duration and purposes of the Agreement.
- 11.6 In relation to the Customer 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.
- 11.7 Without prejudice to the generality of Clause 11.3 the Supplier shall, in relation to Customer Personal Data:
- (a) process that Customer Personal Data only on the documented instructions of the Customer, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Personal Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer on important grounds of public interest.

The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Legislation;

- (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer 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 Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer'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 Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
 - (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this Clause 11.7(f) 11.7 Customer 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 11.7 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.
- 11.8 The Customer hereby provides its prior, general authorisation for the Supplier to:
- (a) appoint processors to process the Customer 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 11;
 - (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 Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer

the opportunity to object to such changes provided that if the Customer 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 Customer shall indemnify the Supplier for any Losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.

- (b) transfer Customer Personal Data outside of the UK or EEA 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 Customer 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).
- 11.9 Either Party may, at any time on not less than thirty (30) days' notice, revise this Clause 11 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 MSA) where there has not been a European Community finding of adequacy pursuant to Article 45 of the EU GDPR in respect of the UK.
- 11.10 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 the Agreement or any collateral contract insofar as it relates to the obligations set out in this Clause 11, or Applicable Data Protection Laws shall be limited to the amount set out in Clause 15.5.
- 11.11 To the extent that the Supplier cannot comply with a change to the Customer's instructions when processing Personal Data without incurring material additional costs:
- (a) the Supplier shall: (i) immediately inform the Customer, 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; and
 - (b) any changes in the Customer's instructions that affect the pricing structure or commercial relationship between the Parties should go through an appropriate Change Order (as set out in Clause 16).

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Subject to Clause 12.2 below, on creation by the Supplier and upon the Supplier receiving payment in full, all Intellectual Property Rights in bespoke materials or code created under the Services ("**Bespoke IPR**") for the Customer shall vest automatically

in the Customer. The Supplier hereby assigns to the Customer 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 Customer hereby provides an irrevocable, worldwide, royalty-free licence to the Supplier for the duration of the Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.

- 12.2 Notwithstanding Clause 12.1 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 Customer's business or Confidential Information ("**General IP**", together with the Background Materials, the "**Supplier Intellectual Property**"). The Supplier grants to the Customer a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use the Supplier Intellectual Property.
- 12.3 Where the Services include the creation of Bespoke IPR by the Supplier and at any time after receipt of such Bespoke IPR the Customer, or a third party on its behalf, modifies such Bespoke IPR then Supplier shall have no obligation with regard to such Bespoke IPR. Any further assistance if required by Customer will be set out in a separate Statement of Work.
- 12.4 The Customer shall pay and indemnify Supplier, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Supplier, arising by reason of claims that (1) Supplier's possession of or use of the Customer's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Customer or any of its customers, 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.
- 12.5 The Supplier shall pay and indemnify Customer, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Customer, arising by reason of claims that (1) Customer's possession of or use of the Supplier's Intellectual Property Rights 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 Customer'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.

- 12.6 If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 12, 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 12.3 or Clause 12.4 (as applicable);
 - (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs 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 IPRs 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 IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 12.7 If an IPR Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought, Supplier may at its own expense ensure that the Customer 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 Customer, 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 Customer, such acceptance not to be unreasonably withheld.
- 12.8 Except to the extent that the Supplier should reasonably have known or advised the Customer the foregoing provisions of Clause 12.6, 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 Customer 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 Customer to any item supplied by the Supplier under the Agreement if such modification is not authorised by the

Supplier in writing where such modification directly gives rise to a claim, demands or action.

13. SOFTWARE LICENCES

- 13.1 In consideration of the applicable Fee paid by the Customer to the Supplier, receipt of which the Supplier hereby acknowledges, the Supplier grants to the Customer a non-exclusive licence, revocable, worldwide, non-transferable for the duration of the applicable Statement of Work until terminated to use of the Software.
- 13.2 In the event that the Customer has purchased additional licenses of the Software since the last renewal, these will be charged and invoiced to the Customer at the new rates (if any) applicable to such licenses.
- 13.3 For the avoidance of doubt, the Supplier shall not confirm dates for training or technical consultancy until payment in full has been received.
- 13.4 In relation to scope of use:
- (a) For the purposes of Clause 13.1:
 - (i) use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer); and
 - (ii) "use of the Software" 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 Customer may not use the Software other than as specified in Clause 13.1 and Clause 13.4(a) without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier.
 - (c) Except as expressly stated in this Clause 13, the Customer 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 Customer, 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 Customer 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.

13.5 The Customer 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 the Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means; or
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (c) access all or any part of the Cloud Services in order to build a product or service which competes with the Cloud Services; or
- (d) use the Cloud Services to provide services to third parties; or
- (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Cloud Services available to any third party except the Authorised Users; or
- (f) attempt to obtain, or assist third parties in obtaining, access to the Cloud Services and/or Documentation, other than as provided under this Clause 13.

13.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or Cloud Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.

13.7 The rights provided under this Clause 13 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer unless otherwise agreed in a Statement of Work.

13.8 The Customer acknowledges that it is responsible for ensuring that the Customer'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.

13.9 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under Clause 13.2(d) 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.

13.10 The Customer 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 the Agreement,

without the prior written consent of the Supplier.

13.11 The Customer shall:

- (a) ensure that the Software is installed on designated equipment only;
- (b) keep a complete and accurate record of the Customer'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 unauthorized 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 (including additional Authorised Users), 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.

13.12 The Customer shall permit the Supplier to inspect and have access to any Customer Site (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 Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

13.13 The Supplier will provide the Customer with all Maintenance Releases generally made available to its Customers. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

13.14 The Customer warrants that it shall not compete with the Software product during the term of the Agreement and for a period of three (3) years thereafter.

14. THIRD PARTY SERVICES

14.1 The Supplier shall procure any Third Party Services required by the Customer 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, the Supplier expressly excludes any warranty to the Customer that the Third Party Services supplied or licensed under the Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations. The Customer shall remain liable for any and all payments owed to the Supplier throughout the Agreement and until the end of the respective licence terms for such Third Party Services (the "**Licence Fees**").

- 14.2 It is a condition of this MSA that the Customer shall enter into such direct Licence Agreements issued by the Third Party Supplier where the Customer must directly contract with that Third Party Supplier as so prescribed by the relevant software owners of each Third Party Services identified within the Agreement and/or in the applicable Statement of Work. In the event the Customer does not accept the terms of such Licence Agreements (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 Customer enters into such Licence Agreement.
- 14.3 The Customer acknowledges that it is responsible for ensuring that the Customer'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.
- 14.4 The Customer acknowledges that all back up shall be the sole responsibility of the Customer unless otherwise expressly agreed to by the Supplier.
- 14.5 The Customer 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 by the Customer of the CSP Agreement, any Licence Agreement and/or any other licence agreement. This Clause 14.5 shall survive termination of the Agreement.
- 14.6 Any third party Equipment is supplied subject to the manufacturer's warranty, if any, and the Supplier provides no warranty for Equipment or any goods that it does not supply.
- 14.7 The Supplier makes no warranty that a Service will interoperate properly with any equipment not procured from the Supplier in connection with that Service.

15. EXCLUSIONS, LIMITATIONS OF LIABILITY, WARRANTIES AND INDEMNITIES

- 15.1 The Customer acknowledges and agrees that, except as expressly provided in this MSA or unless it is a Service under a relevant Statement of Work, the Customer 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 Customer'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.
- 15.2 This Clause 15 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 the Agreement; and
 - (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 15.3 Nothing in the 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.
- 15.4 Subject to Clause 15.3 above, the Service Level Arrangements state the Customer'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.
- 15.5 Any breach of the Party's responsibilities under Clause 11 shall be limited to five hundred thousand pounds (£500,000) in the aggregate, which shall count towards the cap set out in Clause 15.6.
- 15.6 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 the 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.
- 15.7 Except as expressly and specifically provided in the Agreement:
 - (a) 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:
 - (i) special damage even if the other Party was aware of the circumstances in which such special damage could arise;
 - (ii) loss of profits;

- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill and reputation;
- (vi) loss or corruption of data.

15.8 Except as expressly and specifically provided in the Agreement:

- (a) the Customer 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 Customer in connection with the Managed Services, or any actions taken by the Supplier at the Customer'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 the Agreement.
- 15.9 Any indemnity set out in the 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.

16. CHANGE ORDERS

- 16.1 Either Party may request changes to any Services (in each case, a "**Change Order**"). Any Change Order shall be made in writing and sent to the Customer 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.
- 16.2 Where the Parties propose a Change Order the Supplier shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Fees 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 MSA. The Customer shall notify the Supplier whether it accepts or reasonably rejects the Change Order within five (5) Business Days of its receipt of the written estimate.
- 16.3 Until such time as a Change Order 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 Order. Once duly agreed by both Parties, the Change Order shall be deemed incorporated into the Agreement and applicable

Statement of Work and the Supplier shall commence performance of the Change Order accordingly.

- 16.4 Neither Party shall be required to accept any Change Order made by the other Party and shall not be bound by the Change Order unless it has been agreed in writing as set out above.
- 16.5 Unless otherwise agreed in writing, Supplier shall be entitled to charge the Customer at Supplier's then current Rates for investigating, reporting on and, if appropriate, implementing any Change Order requested by the Customer.

17. CONFIDENTIALITY

- 17.1 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.
- 17.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 17.1.
- 17.3 The obligations of confidentiality set out in this Clause 17 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of the 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.

18. TERM AND TERMINATION

- 18.1 This MSA and each Statement of Work shall commence on the Commencement Date and/or the Services Commencement Date (as the case may be) and subject to Clauses 18.2 and 18.6, shall remain in full force for the Minimum Term unless otherwise agreed by the Parties or earlier terminated in accordance with the terms of the Agreement. Thereafter, this MSA 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 Minimum Term or the relevant Subsequent Term, to terminate this MSA.

- 18.2 The Customer has the right to cancel the Agreement at any time during the seven (7) days following the Commencement Date provided always:
- (a) that it shall reimburse the Supplier's costs incurred on pre-contract site visits or procurement of supplies from subcontractors or Third Party Suppliers and all other set up and administration costs; and
 - (b) written notice of the Customer's cancellation must be made by email to: cancellations@infinitygroup.co.uk. Notification via telephone or by email to any other address shall not be accepted.
- 18.3 The Supplier will acknowledge Customer's cancellation notice or any cancellation deemed to arise in accordance with Clause 18.4, within five (5) Business Days and notify the Customer of the cancellation charge and any other final charges outstanding on the Customer's account. If Customer does not receive acknowledgement within five (5) Business Days, the Customer must contact the Supplier to confirm that the cancellation request has been received. The Customer's cancellation shall not be effective until acknowledged by the Supplier.
- 18.4 If the Supplier is unable to activate a Service due to the act or omission of Customer (including but not limited to the provision of incorrect information) the Supplier may treat the Agreement as cancelled and levy the costs provided for in Clause 18.1.
- 18.5 The Customer's right of cancellation under Clause 18.2 lapses after the end of seven (7) days first following the Commencement Date at which point and on which date the Agreement cannot be cancelled but continues for the Minimum Term. If the Customer cancels any part of the Services at any time after the seventh day first following the Commencement Date but before installation and/or Activation is completed it shall be liable for payment of the Activation Charges and Recurring Charges for the entire Minimum Term.
- 18.6 Without prejudice to any rights that the Parties have accrued under the Agreement or any of their respective remedies, obligations or liabilities, a Party may terminate this MSA with immediate effect by giving written notice to the other Party if:
- (a) the Customer breaches its obligations in Clauses 5.6 and 5.7;
 - (b) the Supplier commits a material breach of any material term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of forty five (45) days after being notified to do so;
 - (c) the other Party breaches any of the terms of Clause 11, Clause 17 or Clause 23;
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.

- 18.7 Without affecting any other right or remedy available to it, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
 - (b) any required third party authorisations, licences, consents or approvals, including for finance, and any applicable planning, landlord, access or wayleave consents necessary for all or any part of the supply of Equipment and/or Services is withdrawn;
 - (c) the Customer 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 (where a company) 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 the Customer;
 - (d) 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 the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (e) the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - (f) a creditor or encumbrancer of the Customer 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 its assets and such attachment or process is not discharged within fourteen (14) days;
 - (g) 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 Customer (being a company);
 - (h) the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - (j) any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this Clause; or
 - (k) if required by a legal or regulatory obligation.

- 18.8 If for any reason a contract between a third party and the Supplier relating to the Supplier's right to provide the Third Party Services which is the subject of the Agreement is terminated, then the Agreement shall automatically terminate, save that where the contract relates to other Deliverables other than that Third Party Service, termination of the Agreement shall operate only in so far as it relates to such Third Party Services.
- 18.9 Termination of the Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 18.10 On termination of the Agreement for any reason:
- (a) the Supplier shall immediately cease provision of the Services;
 - (b) the Customer 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 Minimum Term or the Subsequent Term (as applicable); (ii) any Licence Fees as set out under Clause 14.1; 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 Customer acknowledges and agrees that any Third Party Supplier fees may not be mitigated by the Supplier and the Customer shall not hold the Supplier responsible if it incurs full termination fees; and
 - (c) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.
- 18.11 Where, except as provided in Clause 18.5 above, the Agreement is terminated by either Party or otherwise brought to an end, all Recurring Charges for the remainder of the Minimum Term or the Subsequent Term (as applicable), whether or not yet invoiced, shall become payable immediately.
- 18.12 Save as provided in this Clause 18 or elsewhere in this MSA, 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 MSA.
- 18.13 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.
- 18.14 Upon a termination of the Agreement or a specific Statement of Work (as applicable), the Supplier shall only retain the Customer Data for a maximum period of three (3) months from the date of termination and may delete all such copies of its Customer Data after the (3) months period has ended.

- 18.15 On termination of the Agreement for whatever reason the Customer shall return all of the Supplier Materials which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's Site and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.
- 18.16 The provisions of Clauses 7, 9, 11, 12, 13, 14, 15, 17, 18, 19, 21 and 23 shall survive termination of any Statement of Work or this MSA.

19. SUSPENSION

- 19.1 Without affecting any other right or remedy available to it, including its rights to claim payment of all Fees irrespective of the suspension and its rights to terminate, the Supplier may suspend provision of Services under the Agreement with immediate effect by giving written notice to the Customer if the Supplier's performance of its obligations under the Agreement or proper working or authorised use of the Equipment is prevented or delayed by any of the events referred to in Clauses 19.1(a) to (i) below:
- (a) the Customer is in breach of any of its obligations under the Agreement; or
 - (b) any circumstance or event exists or is threatened that would otherwise give the Supplier the right to terminate the Agreement or the Supplier reasonably believes that the Customer is about to become subject to any of them; or
 - (c) the Customer makes unreasonable or unnecessary calls for support to the Supplier in respect of matters that can be addressed by Customer training or reading information provided in the Supplier Materials and information provided by the Supplier in association with the supply; or
 - (d) a need to avoid loss, damage or disruption being caused to third parties; or
 - (e) any operational or technical reasons including any damage or delay resulting from accident, transportation, neglect or misuse, failures of electrical power, surge of electrical power, lightning damage, water damage or causes other than ordinary use, any fault, failure or change in the electricity supply or connectivity, defects in external or internal cabling at or serving the Customer's Site; or
 - (f) any regulatory or legal obligation; or
 - (g) delay in the execution of any work of installation, activation, maintenance, repair, replacement, alteration or removal of or to the Equipment howsoever caused; or
 - (h) any unauthorised use of any part of the Services, Equipment or Supplier Materials (including any of the matters referred to in Clause 5.4(n) above); or
 - (i) any other default by act or omission of the Customer, its agents, subcontractors, or employees, or third party suppliers, to perform any relevant obligation.
- 19.2 In exercising its right of suspension in accordance with Clause 19.1, the Supplier shall:

- (a) be entitled to continue to suspend performance of the Services until the relevant event or events described in Clause 19.1 (a) to (i) inclusive has or have (as the case may be) been remedied, and to rely on the relevant event or events to relieve it from the performance of any of its obligations; and
- (b) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such suspension, prevention or delay; and
- (c) be entitled to payment of the Fees during the period of suspension, including any additional costs or losses sustained or incurred by the Supplier arising directly or indirectly from any of the events described in Clause 19.1 (a) to (i) inclusive; and
- (d) be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.
- (e) lift its suspension or recommence its provision of the Services within a reasonable timescale after:
 - (i) the event or events described in Clause 19.1 (a) to (i) has or have (as the case may be) been remedied; and
 - (ii) in case of any unauthorised use of any part of the Services, Equipment or Supplier Materials (including any of the matters referred to in Clause 5.4(n) above); the Customer demonstrates to the Supplier's reasonable satisfaction that appropriate technical, organisational, security or other measures have been put in place to prevent any further unauthorised use.

19.3 Where the Supplier has the right to suspend or terminate the Services under Clause 19 and the conditions in which the Supplier is required to lift its suspension or recommence its provision of the Services under Clause 19.2 (e) have not been met within thirty (30) days' of the date on which the Supplier has received the relevant notice under Clause 19.1, the Agreement relating to such Services shall be deemed terminated and the provisions of Clause 18 shall apply.

20. STAFF TRANSFER AND NON-SOLICITATION

- 20.1 It is not intended that any staff be transferred from the Supplier to the Customer or from the Customer to the Supplier pursuant to the Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").
- 20.2 Neither Party shall solicit the other Party's staff or contractors who have been employed or engaged in the Services or the performance of the Agreement during the lifetime of the Agreement and for a period of nine (9) 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.

20.3 In the event that either Party is in breach of Clause 20.2 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 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.

20.4 The Parties hereby acknowledge and agree that the formula specified in Clause 20.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

21. RELIEF EVENTS

Subject to Clause 15.3, and notwithstanding any other provision of the Agreement, the Supplier shall have no liability for failure to perform the Services or its other obligations under the Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

22. FORCE MAJEURE

22.1 The Supplier shall have no liability to the Customer under the Agreement and the Customer shall have no obligation to pay the Fees if the Supplier is prevented from, or delayed in, performing its obligations under the Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control including 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 the Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), provided that:

- (a) the Customer 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 the Agreement by giving fourteen (14) days' written notice to the other Party.

23. ANTI-BRIBERY

23.1 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 Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement.
- 23.2 The Supplier shall procure that any person associated with the Supplier, who is performing services in connection with the Agreement, adheres to terms equivalent to those imposed on the Supplier in this Clause 23 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 23.3 For the purpose of this Clause 23, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 23 a person associated with the Supplier includes any subcontractor of the Supplier.

24. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under the 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.

25. SEVERANCE

- 25.1 If any court or competent authority finds that any provision of the 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 the Agreement shall not be affected.
- 25.2 If any invalid, unenforceable or illegal provision of the 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.

26. ENTIRE AGREEMENT AND AMENDMENT

- 26.1 This MSA (and its references to website address to further documentation), the Licence Agreements, the Statement of Works, the Supplemental Terms and the CSP

Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

- 26.2 Each Party acknowledges that in entering into the 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 the Agreement.
- 26.3 Each Party agrees that its only liability in respect of those representations and warranties that are set out in the Agreement (whether made innocently or negligently) shall be for breach of contract.
- 26.4 The Supplier may make minor amendments to this MSA from time to time for operational reasons, provided that such amendments are reasonable and do not materially affect the nature and scope of the Services to be provided to the Customer. Save in respect of any non-material amendments to this MSA for the purposes of compliance with legislative or regulatory requirements, no alteration to or variation of this MSA 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.

27. ASSIGNMENT

The Customer 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 the 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 the Agreement.

28. NO PARTNERSHIP OR AGENCY

Nothing in the 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.

29. THIRD-PARTY RIGHTS

The 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 CSP Agreement) and is not intended to benefit or be enforceable by anyone else.

30. NOTICES

- 30.1 Any notice or other communication required to be given to a Party under or in connection with the 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.

- 30.2 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.
- 30.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall include e-mail.

31. DISPUTE RESOLUTION

- 31.1 If a dispute arises under the 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**").
- 31.2 If the Parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five Business Days thereafter):
- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of the Agreement ("**Designated Representative**"); and
 - (b) notify the other Party in writing of the name and contact information of such Designated Representative.
- 31.3 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.
- 31.4 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.

32. MARKETING

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 Customer 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.

33. COMPLAINTS

If the Customer wishes to make a complaint about the Services, please refer to the Supplier's Complaints Procedure at www.infinitygroup.co.uk.

34. GOVERNING LAW AND JURISDICTION

- 34.1 The 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.
- 34.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).