

## CALL-OFF CONTRACT TERMS AND CONDITIONS

**DATED**

**2024**

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(1) **[SUPPLIER]**

(2) **[END USER]**

THIS AGREEMENT is dated

2024

**PARTIES:**

- (1) [●] of [●] (the “Supplier”); and
  - (2) [END USER] of [●] (the “End User”).
- (together the “Parties”, and “Party” shall be construed accordingly).

**BACKGROUND**

- (A) The Supplier is in the business of providing the Solution.
- (B) This Contract is pursuant to the Framework Agreement.
- (C) The End User wishes to obtain and the Supplier wishes to provide the Solution as agreed in each Statement of Works, in accordance with the terms set out in this Agreement. This Agreement and the Statements of Works in place from time to time together form the Contract.

**1. INTERPRETATION**

1.1 The following definitions and rules of interpretation apply in this agreement.

- “Agreement”** : this call-off contract for the provision of the Solution;
- “Acceptance”** : the written confirmation from the End User that it is satisfied in the first instance that the Solution has been provided in accordance with the Statement of Works;
- “Breakdown Assistance”** : repair Solution provided by the Supplier to the End User as detailed in the Third Schedule (Service Levels) ;
- “Business Day”** : a day other than a Saturday, Sunday or public holiday in England;
- “Charges”** : the payments in relation to the Solution and any other payments associated with the delivery and receipt of the Agreement as detailed within the Second Schedule of this Agreement;

<b>“Contract”</b>	:	this Agreement and the Statement of Works in place from time to time;
<b>“Confidential Information”</b>	:	information of commercial value, in whatever form or medium, which has been kept confidential by the party from whom the information originates and which has not come into the public domain during the Term of this Agreement in breach of any obligation of confidence, including information relating to the Solution or any of its constituent parts, the source code relating to the Solution or any such parts, commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to pricing, and marketing;
<b>“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Process(es)(ing)” and “appropriate technical and organisational measures”</b>	:	shall have the definitions ascribed to them in the Data Protection Legislation;
<b>“Data Protection Impact Assessment”</b>	:	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
<b>“Data Protection Legislation”</b>	:	all applicable privacy and data protection laws including the GDPR, the Privacy and Electronic Communications Directive (2002/58/EC) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and any applicable national implementing laws, regulations and secondary legislation in England and Wales (including the Data Protection Act 2018), which relate to the processing of Personal Data and the privacy of electronic communications (or following the UK’s departure from the European Union, all equivalent legislation enacted in the UK in respect of the protection of Personal Data), all as amended, replaced or updated from time to time;

<b>“Defect”</b>	:	a material error or malfunction with the Solution;
<b>“Delivery”</b>	:	the transfer of physical possession of the Supplies to the End User at the Site;
<b>“Delivery Date”</b>	:	the date (s) upon which the Solution is to be delivered to the End User contained in the Statement of Works;
<b>“Documentation”</b>	:	all and any certificates, manuals, reports, agreements and other paperwork or records produced by the manufacturer of the Supplies Solution and which relate to the Supplies, as outlined in the Statement of Works;
<b>“End Date”</b>	:	the End Date for each Statement of Work as detailed in the relevant Statement of Work;
<b>“End User Representative”</b>	:	the End User’s representative authorised specifically by the End User to enter into the Agreement and act on behalf of the End User in relation to the Contract;
<b>“Framework Agreement”</b>	:	the Framework Agreement entered into between [SUPPLIER] and [CUSTOMER] on [DATE];
<b>“GDPR”</b>	:	Regulation (EU) 3016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) OJL 119/1.4.5.2016;
<b>“Installation Date”</b>	:	such date as is mutually agreed between the Supplier and the End User on which the Solution shall be installed as set out in the Statement of Works;
<b>“Intellectual Property Rights”</b>	:	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and

including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

<b>“Key Personnel”</b>	:	those Supplier individuals nominated by the End User as being of importance to the completion or delivery of the Solution;
<b>“Law”</b>	:	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body;
<b>“Maintenance”</b>	:	maintenance and support, annual servicing and any necessary repairs to the Solution including labour, the replacement of parts and the provision of Breakdown Assistance as detailed in the Third Schedule (Service Levels);
<b>“Manufacturers’ Warranties”</b>	:	all warranties, guarantees and indemnities provided by the manufacturer of the Supplies to the Supplier in accordance with the relevant Statement of Works;
<b>“New Releases”</b>	:	a new version of Software that provides additional Software features, functions or overall product performance, efficiency and/or usability;
<b>“Processor Personnel”</b>	:	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Agreement;
<b>“Response Time”</b>	:	4 hours working time 2 hours fix time from the End User first logging a call with the Supplier or otherwise contained in the Statement of Works;
<b>“Quarter”</b>	:	each period of three calendar months (for each year, Quarter 1 runs from 1 January - 31 March, Quarter 2 runs from 1 April – 30 June, Quarter 3 runs from 1 July – 30 September and Quarter 4 runs from 1 October to 31 December);
<b>“Site”</b>	:	the nominated address/addresses of the End User at which the Solution is to be installed

and/or performed by the Supplier on behalf of the End User. Every Site may be collectively referred to as **the Sites**;

<b>“Services”</b>	:	the services provided by the Supplier to the End User as contained in the relevant Statement of Works;
<b>“Software”</b>	:	all computer programmes, drivers and applications necessary to ensure that the Solution operates effectively including the media upon which those programmes are intended to be stored as outlined in the relevant Statement of Works;
<b>“Solution”</b>	:	as detailed in the relevant Statement of Works ;
<b>“Start Date”</b>	:	the Start Date for each Statement of Work as detailed in the relevant Statement of Works ;
<b>“Statement of Works”</b>	:	means the order form, or statement of work in Schedule 1, as agreed between the parties in writing from time to time, in relation to the Solution;
<b>“Sub-processor”</b>	:	any third party appointed to process Personal Data on behalf of that Processor in accordance with this Contract;
<b>“Supplies”</b>	:	the goods/hardware supplied from the Supplier to the End User whether on the basis of a lease, sale or part of the Services as specified in the relevant Statement of Works and which form part of the Solution;
<b>“Training”</b>	:	the training in respect of the installation and use of the Supplies to be provided by the Supplier as detailed in the relevant Statement of Works;
<b>“TUPE”</b>	:	the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
<b>“VAT”</b>	:	value added tax chargeable under the Value Added Tax Act 1994.

1.2 The Statements of Works and Schedules form the Contract and shall have effect as if set out in full in the body of the Agreement. Any reference to this Contract includes this Agreement, the Statements of Works and the Schedules. If there is any inconsistency or conflict between this Agreement, any Statements of Works and Schedules the following order of priority and terms shall prevail:

1.2.1. this Agreement.

1.2.2. Statements of Works; and

1.2.3. the Schedules.

- 1.3 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignees.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision and a reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **writing** or **written** includes hard copy paper documents, emails or other forms of electronic communication.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done or to agree or acquiesce to that thing being done.
- 1.12 A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.13 References to clauses are to the clauses of this Agreement. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. FORMATION OF CONTRACT AND DURATION

- 2.1 The Contract shall commence on [DATE] and shall continue until [DATE] ("Term") unless terminated earlier in accordance with clause 22 (Termination). Where the term of one or more Statements of Works is due to expire after the date on which this Agreement is due to expire, the expiry date of this Agreement shall be extended to match the last day of the term of the Statement of Works that is due to expire last.

- 2.2 Each Statement of Works shall be agreed in the following manner:
- 2.2.1 the End User shall ask the Supplier to provide the Solution with as much information as the Supplier may reasonably request in order to prepare a draft Statement of Works for the Solution.
  - 2.2.2 following the receipt of the information requested from the End User, the Supplier shall, as soon as reasonably practicable either:
    - a) inform the End User that it declines to provide the requested Solution; or
    - b) provide the End User with a draft Statement of Works.
  - 2.2.3 if the Supplier provides the End User with a draft Statement of Works pursuant to clause 2.2.2b), the Supplier and the End User shall discuss and agree that draft Statement of Works; and
  - 2.2.4 the End User executes and returns the Statement of Works, shall confirm their agreement to a Statement of Works in writing.
- 2.3 Once a Statement of Works has been agreed in accordance with 2.2.4, the Contract will be formed and it shall become binding on the parties. No amendment shall be made to it except in accordance with clause 30 (Variation).

### **3. SOLUTION**

- 3.1 The Supplier shall supply, and the End User shall use, the Solution and pay the Charges, in accordance with the terms and conditions of the Contract.
- 3.2 On the terms and conditions set out in this Agreement and the relevant Statement of Works, the Supplier agrees to:
- 3.2.1 deliver and install the Solution at the Site on the Delivery Date. Time is of the essence in relation to the Delivery;
  - 3.2.2 integrate the Supplies and the Software as part of the Solution;
  - 3.2.3 provide all equipment, tools and vehicles and such other items as are required to provide the Solution;
  - 3.2.4 provide the Solution on the Installation Date;
  - 3.2.5 ensure the Solution conforms to the descriptions and specifications set out in the relevant Statement of Works and that the Solution shall be fit for any purpose expressly or impliedly made known to the Supplier by the End User;
  - 3.2.6 co-operate with the End User in all matters relating to the Solution, and comply with all instructions of the End User;
  - 3.2.7 meet any performance dates and performance requirements for the Solution contained in the Third Schedule (Service Levels) or agreed and set out in the Statement of Works;
  - 3.2.8 provide the Solution via the Key Personnel who are suitably qualified to carry out tasks associated with the Delivery of the Solution and thereafter from time to time, make available any additional personnel in accordance with this Agreement and no additional cost. The Key Personnel shall not be released from providing



the Solution to the End User except for reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the End User, or the element of the Solution in respect of which the individual was engaged has been completed to the End User's satisfaction or other extenuating circumstances explained to the End User. Any replacements for the Key Personnel shall be subject to the agreement of the End User and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Solution. The cost of effecting such replacement shall be borne by Supplier;

- 3.2.9 use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied (or sold) to the End User will be free from defects in workmanship, installation and design;
  - 3.2.10 obtain and at all times maintain all necessary licences and consents and comply with all applicable Laws;
  - 3.2.11 observe all health and safety rules and regulations and any other security requirements or mandatory policies that apply at any of the End User's Sites;
  - 3.2.12 not do or omit to do anything which may cause the End User to lose or to put into jeopardy any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the End User may rely or act on the Solution; and
  - 3.2.13 provide such Solution in accordance with and to the standards specified within the Third Schedule (Service Levels) to the satisfaction of the End User.
- 3.3 The Solution shall be available to the End User between the hours of **[08:30 and 17:00 Monday to Friday, excluding bank holidays.] (please detail the required hours of service availability)** ('Normal Working Hours').
- 3.4 Where there is a requirement for an extension of the hours referred to in clause 3.3 of this Agreement, the extension shall be agreed in writing between the Parties in accordance with clause 30 (Variation) and the Supplier shall be entitled to charge the End User an additional fee in respect of the additional Solution requirement in addition to the Charges.
- 3.5 If the Supplier fails to supply any part of the Solution, the End User shall provide the Supplier written notice of 10 Business Days to correct any failure to supply (either in part, or all). If the Supplier fails to supply any part of the Solution, the End User may pay another person to supply part or all of the Solution and the costs incurred may be deducted from the Charges or shall be recoverable as a debt.

#### **4. SUPPLIES**

- 4.1 The Supplier shall provide the Supplies to the Site of the End User.
- 4.2 The Supplier shall ensure that the Supplies shall:
  - 4.2.1 be free from Defects in design, material and workmanship, correspond with their description and any applicable specification and shall remain so for 18 months after Acceptance or 12 months after actual use of the Supplies;
  - 4.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or expressly made

known to the Supplier by the End User , and in this respect the End User relies on the Supplier's skill and judgement;

4.2.3 be new (unless otherwise specified within the Statement of Works) and free from defects in design, material and workmanship; and

4.2.4 comply with all applicable Laws;

4.3 Supplier warrants and represents to the End User that the Supplies will be provided:

4.3.1 in a proper, skilful and workmanlike manner;

4.3.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with good industry practice;

4.3.3 in accordance with the Contract and specifically the performance requirements stated within the Third Schedule (Service Levels); and

4.3.4 to the satisfaction of the End User's Representative.

4.4 The Supplier warrants that to the extent that Services are performed as part of the Solution, they shall be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice.

4.5 The Supplier will make good at its expense any defect in the Supplies that the End User discovers under proper usage during the 12 months after actual use or eighteen months from the Acceptance as detailed with clause 4.2.1, whichever period shall expire last. Such defects may arise due to faulty design or instruction as to the use of the Supplies or inadequate or faulty materials or poor workmanship or any other breach of the Supplier's obligations whether in the Contract or at law.

4.6 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations in relation to the Supplies and Delivery of the Supplies.

4.7 Repairs or replacements will themselves be covered by this Agreement but for a period of twelve months from Acceptance.

4.8 The End User shall provide all cabling and other equipment needed for the installation of the Supplies at the Site including any equipment needed to connect and interface the Supplies with any computer hardware of the End User.

## **5. SUPPLIES REPLACEMENT**

5.1 The Supplier shall provide a replacement of the Supplies, or any part of it, on a like for like basis and within 10 working days upon written notice being received by the Supplier from the End User, where:

5.1.1 the Supplies have required 4 breakdown calls in one Quarter for the same fault;

5.1.2 the Supplies have become incapable of achieving the reference standard as detailed in the Statement of Works;

5.1.3 the Supplies breach any warranty in this Agreement;

5.1.4 the Supplies are not fit for purpose;

5.1.5 where otherwise stated in the Third Schedule (Service Levels).

## **6. SOFTWARE AND DOCUMENTATION**

- 6.1 The Supplier shall provide the Software and Documentation under the terms of this Agreement where contained in the relevant Statement of Works.
- 6.2 The Supplier grants to the End User the non-exclusive, non-transferable right to use the Software and Documentation.
- 6.3 The End User may use the Software with other software subject to the Supplier's prior written agreement and such agreement shall not be unreasonably withheld.
- 6.4 The End User may not make adaptations or variations to the Software without the prior consent of the Supplier.
- 6.5 The End User may not disassemble, decompile, reverse translate or in any other manner decode the Software, except as permitted by law.
- 6.6 The Supplier shall provide the Software and Documentation on the Installation Date.
- 6.7 Supplier warrants to the End User that the Software will be provided:
  - 6.7.1 in a proper, skilful and workmanlike manner;
  - 6.7.2 by appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
  - 6.7.3 in accordance with the Contract and specifically the performance requirements stated within the Statement of Works and Third Schedule (Service Levels);
  - 6.7.4 to the reasonable satisfaction of the End User's Representative.
- 6.8 The Supplier shall provide to the End User from time to time copies of the Documentation containing sufficient up-to-date information for the proper use and maintenance of the Software and any Services. Such Documentation may be supplied in electronic form.
- 6.9 The End User may make such further copies of the Documentation as are reasonably necessary for its use of the Software. The End User shall ensure that all Supplier's proprietary notices are reproduced in any such copy. The End User may provide copies of the Documentation to any third party who needs to know the information contained in it, provided that such third party keeps the Documentation confidential.
- 6.10 In addition to the Documentation, the Supplier shall produce copies of any licences, permissions and consents in relation to the Software to the End User upon request.
- 6.11 The Supplier shall supply the End User with New Releases in machine-readable form together with related amendments to the Documentation. The Supplier may make such New Releases available for downloading over the internet and will promptly notify the End User when such downloads are available.
- 6.12 The Supplier shall notify the End User promptly in writing of the issue of any New Releases of the Software, specifying the following:
  - 6.12.1 the charge for delivery and installation of the New Releases;
  - 6.12.2 any licence fee that is payable for the New Releases;

- 6.12.3 in what way the New Releases differ from the previous version in terms of functionality, performance and compatibility.
- 6.13 For the avoidance of doubt, nothing in this Agreement shall oblige the End User to accept any New Releases of the Software but the Supplier shall ensure that the End User's current release remains fully supported during the Term.
- 6.14 Where migration of any data is detailed in the relevant Statement of Works, the Supplier shall use reasonable efforts to ensure the accurate migration of any data on the date and time specified in the relevant Statement of Works but gives no warranties as to the completeness or accuracy of such migration. The End User shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to the Supplier of any inaccuracies or omissions in order to permit the Supplier to correct them. If such data includes Personal Data, the Supplier shall return all copies of such Personal Data to the End User on completion of the data migration process.
- 6.15 The Software may be used only by End Users at the Site(s) except as follows:
  - 6.15.1 The Software is provided as cloud based;
  - 6.15.2 the Software may be used on any replacement for all or any part of the Supplies. If the End User transfers the undertaking of its business in whole or part to another site, the Software may be used at the new site by the End User, provided that the Supplier is informed in writing of the change of site before use of the Software commences at the new site;
  - 6.15.3 if the Supplies becomes inoperable for any reason, the Software may be temporarily used, if possible, on backup equipment until the Supplies are repaired, and the End User may use the Software for the purpose of testing whether any such backup equipment is suitable for use while the Supplies are inoperable; and
  - 6.15.4 if any Site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Software may be used at an alternative site until the Site is again usable, provided that the End User gives the Supplier notice of such alternative site and permits the Supplier to inspect such site once the Software is again in use at the Site to ensure that no copy of all or any part of the Software remains at the temporary site. Where the alternative site is managed by a third party, the Supplier may only use such alternative site where the third party has signed a confidentiality undertaking addressed to the Supplier to protect the Supplier's Confidential Information before the Software is transferred to the alternative site.
- 6.16 Before delivering any item of Software to the Site, the Supplier shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the End User once properly installed.
- 6.17 The Supplier may treat the End User's breach of any third-party licence related to the Solution as a breach of this Agreement.
- 6.18 The Supplier shall ensure that support is available by telephone and e-mail during Normal Working Hours to provide assistance to the End User in respect of the following:
  - 6.18.1 remedying Defects in the Software; and
  - 6.18.2 providing advice on the use of the Software

6.19 The End User shall not:

- 6.19.1 sub-license, rent, lend, assign or transfer in any other way this Agreement or the Software to any person without the prior written consent of the Supplier; nor
- 6.19.2 give access to the Software through any network of computers to users who are not employees, contractors or agents of the End User.

## **7. DELIVERY, INSTALLATION AND DELAYS**

7.1 The Supplier shall deliver the Solution on the Delivery Date to the Site.

7.2 The Solution shall be delivered to the Site at the Supplier's risk.

7.3 The Supplies and Software shall be configured, connected and commissioned by the Supplier within 48 hours of delivery to the Site, unless otherwise agreed in writing between the Parties. The Documentation shall be delivered to the End User at the same time as the Supplies and Software. The cost of Delivery shall be paid by the Supplier unless expressly agreed otherwise by the Parties in writing.

7.4 The End User shall, at its own expense, prepare the Site in accordance with the information provided by the Supplier in advance of each Delivery Date. The End User may request reasonable assistance from the Supplier to carry out such preparation.

7.5 Time for delivery shall be of the essence.

7.6 The Solution shall commence immediately upon satisfaction of the End User, unless otherwise agreed in writing between the Parties. The Supplier shall use its reasonable endeavours to carry out all such other actions as may be necessary to ensure that a fully functioning Solution is left at the Site as a result of the installation of the Solution.

7.7 If the Supplier does not deliver the Solution on the relevant Delivery Date, then the End User shall in the first instance seek rectification of the issue by the Supplier however where such rectification is not forthcoming to the satisfaction of the End User within 20 Business Days the End User will have the right to:

7.7.1 terminate the Contract in respect of the defective/missing elements of the Solution;

7.7.2 refuse to accept any subsequent delivery of the Solution which the Supplier attempts to make until such defective/missing elements of Solution are delivered;

7.7.3 recover from the Supplier any expenditure reasonably incurred by the End User in obtaining a substitute Solution from an alternative supplier; and/or

7.7.4 claim damages for any additional costs, loss or expenses incurred by the End User which are in any way attributable to the Supplier's failure to deliver the Solution by the Delivery Date provided always that no liability for indirect and/or consequential loss shall be incurred by the Supplier.

7.8 Delivery of the Solution shall take place in accordance with clauses 7 (Delivery, Installation and Delays) and 13 (End User Obligations) of the Agreement.

7.9 The End User shall have the right to reject the Solution in whole or in part whether or not paid for in full or in part within a reasonable time of Delivery or performance, if they do not conform with the requirements of this Agreement.

## **8. TRAINING**

- 8.1 Training shall be delivered to the End User by the Supplier or its agent at the Site as contained in the Statement of Works within 7 Business Days of the Installation Date or as stated within the Statement of Works.
- 8.2 Certain individuals of the End User may be designated “super users” to be provided with enhanced training enabling such individuals to train other users in the use of the Supplies, Services or Software at the Site. Such requirement shall be agreed in writing between the Parties.
- 8.3 The End User may request additional training by the Supplier. The Supplier shall have the right to charge an additional fee for such training in addition to the Charges.

## **9. MAINTENANCE AND BREAKDOWN ASSISTANCE (IF APPLICABLE)**

- 9.1 The Supplier shall provide the Maintenance in accordance with the Statement of Works in all material respects.
- 9.2 In addition to clause 9.1 above, the Supplier shall provide any agreed Breakdown Assistance within 4 working hours of being requested to do so by the End User [(regardless of whether such request is made on a Business Day or not)], unless agreed otherwise by the Parties, and in any event shall use all reasonable endeavours to meet any other performance dates for the provision of the Maintenance.
- 9.3 The Supplier shall have the right to make any changes to Maintenance which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Maintenance, and the Supplier shall notify the End User in any such event.
- 9.4 The Supplier warrants to the End User that the Maintenance will be conducted using all reasonable care and skill and in any event in accordance with the Statement of Works in all material respects and any instructions or guidance provided by the manufacturer of the Supplies.
- 9.5 The Supplier shall use its best endeavours within the context of the key performance indicators as detailed within the Third Schedule (Service Levels), to provide to the End User a breakdown of the faults of the Solution within the Response Time.
- 9.6 The Parties may agree an enhanced or varied Response Time. In such cases the Supplier shall be entitled to charge the End User a fee in addition to the Charges.
- 9.7 With the exception of Supplies purchased outright, where the Supplies experience a fault over two consecutive Business Days or as otherwise agreed between the parties in a Statement of Works, the Supplier shall provide a suitable replacement of the relevant Supplies to the satisfaction of the End User within 72-hours of the Supplier being notified in writing of such fault and continuing until the Supplies are fully operational.
- 9.8 Upon the Supplier providing the Maintenance, and the End User remains unsatisfied, the End User shall be entitled to escalate the complaint by documenting such complaint to the Customer Services Director of the Supplier or similar employee of Director level or above. Such representative of the Supplier will endeavour to resolve the matter within five working days from receipt of such complaint.
- 9.9 The Maintenance shall allow the End User to:
  - 9.9.1 benefit from the Solution for the term of the Agreement;
  - 9.9.2 log support calls with a help desk by email, by telephone or by postal service;

- 9.9.3 log support calls through automated email alerts direct from the Supplies where this facility has been authorised by the End User;
- 9.9.4 receive telephone support in respect of any fault or query;
- 9.9.5 receive remote support via the network where this facility has been authorised by the End User;
- 9.9.6 receive at the Site a suitably qualified engineer to address a fault where deemed necessary by the Supplier; and
- 9.9.7 receive any other relevant services as contained the Third Schedule (Service Levels).

## **10. LEASE (IF APPLICABLE)**

- 10.1 If Supplies are to be leased as detailed in a Statement of Works, the Supplier shall lease the Supplies to the End User for use at the Site as detailed in that Statement of Works and subject to the terms and conditions of this Agreement.
- 10.2 Leased Supplies shall at all times remain the property of the Supplier, and the End User shall have no right, title or interest in or to such Supplies (save as set out in this Agreement). The Supplier shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the End User's quiet possession of the Supplies.

## **11. STAFF**

- 11.1 The Supplier undertakes that its employees and contractors, while at the Site of the End User, will comply with all relevant rules and regulations laid down by the End User from time to time for the behaviour of its own employees and contractors, as notified to the Supplier in writing from time to time. The Supplier shall remove any of its personnel or contractors who the End User can demonstrate have failed to comply with such rules, regulations and requirements.
- 11.2 The Supplier alone shall be liable for the supervision, direction, control, wages, taxes, national insurance and benefits of its personnel and contractors. The Supplier assumes full liability for their acts and omissions and acknowledges that they are not employees or agents of the End User. The Supplier shall ensure that it nominates a Supplier representative and equally the End User shall ensure that it nominates an End User Representative. Any correspondence in respect of the Solution and all aspects of this Agreement shall be between these two Representatives. No changes shall be made to the Supplier representative without the express approval of the End User which shall not be unreasonably withheld.
- 11.3 The Supplier will always inform the End User's Representative before making any visit to the Site (other than for breakdown calls by service engineers requested by the End User). The End User reserves the right to refuse any of the Supplier's personnel involved in the performance of the Supplier's obligations under this Agreement access to the Site, which shall in any event only be given to the extent necessary for the proper performance of this Agreement.
- 11.4 The personnel engaged by the Supplier to deliver the Solution to the End User will be fully trained in all aspects of the operation, receipt and use of the Solution and will have direct access to any manufacturer's current technical manuals and support services.

- 11.5 The Supplier shall ensure that the staff engaged by the Supplier to deliver the Solution to the End User will as applicable be security vetted and approved to the Disclosure and Barring Service checks, or Baseline Personnel Security Standard checks or similar.
- 11.6 During the term of this Agreement the Supplier shall provide to the End User any information the End User may reasonably require relating to any individual employed, assigned or engaged in providing the Solution under this Agreement (subject to the Data Protection Legislation). The Supplier shall indemnify the End User and any New Supplier (as defined in the Fifth Schedule)
- 11.7 If TUPE is applicable when a Statement of Work or this Agreement comes to an end (either by expiry or termination), the provisions of the Fifth Schedule shall apply.
- 11.8 Where the provisions of TUPE shall apply to transfer the employment of any of the End User's employees (**Transferring End User Employees**) to the Supplier, the following provisions shall apply:
- 11.8.1 The End User undertakes to the Supplier that it shall pay all sums due to or in relation to the Transferring End User Employees (whether arising under common law, statutes, equity or otherwise) attributable to the period up to and including the date of TUPE transfer to the Supplier, including all salaries, wages, bonus or commission, expenses, holiday pay, National Insurance and pension contributions, liability to taxation and other sums payable in respect of any period up to and including that date.
- 11.8.2 The Parties shall comply with their respective obligations pursuant to TUPE. This shall include provision of employee liability information to the Supplier by the End User;
- 11.8.3 The End User shall indemnify the Supplier in full for and against all costs, claims, liabilities and expenses (including reasonable legal expenses and liability to taxation) incurred by the Supplier in connection with or as a result of:
- a) the termination by the End User of the employment of any Transferring End User Employees; and
  - b) anything done or omitted to be done by the End User in respect of the Transferring End User Employees during the period up to and including the date of TUPE transfer to the Supplier which is deemed to have been done by the Supplier by virtue of TUPE
- provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the Supplier.
- 11.8.4 The Supplier shall indemnify the End User against all costs, claims, liabilities and expenses (including reasonable legal expenses and liability to taxation) incurred by the End User in connection with or as a result of:
- a) any failure by the Supplier to comply with its obligations pursuant to TUPE; and
  - b) anything done or omitted to be done by the Supplier in respect of any of the Transferring End User Employees whether before or after date of the TUPE transfer to the Supplier.

## 12. WARRANTY



12.1 The warranties given in this clause 12 are in addition to warranties given in other clauses of this Agreement.

12.2 The Supplier warrants that:

12.2.1 the Supplies and Software will be new (except where otherwise specified in this agreement) and of satisfactory quality and will be suitable for the purpose for which it is intended; and

12.2.2 as far as it is able, the Supplier will pass on to the End User the benefits of any Manufacturers' Warranties.

12.2.3 The Supplier shall use best endeavours to remedy free of charge, any Defect in the Solution which manifests itself within 18 months of Acceptance or 12 months after actual use of the Solution within 10 Business Days of being notified in writing by the End User, provided that:

- a) the Supplier is permitted to make a full examination of the alleged Defect;
- b) the Defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation;
- c) the Defect did not arise out of any information, design or any other assistance supplied or furnished by the End User or on its behalf; and
- d) the Defect is directly attributable to defective material, workmanship or design.

12.3 Insofar as the Solution comprises or contains equipment or components which were not manufactured or produced by the Supplier, the End User shall be entitled only to such warranty or other benefit as the Supplier has received from the manufacturer warranties.

12.4 If the Supplier fails to remedy any Defect in accordance with clause 12.2.3, this Agreement shall be deemed breached and the End User, at its sole discretion, shall have the right to recover damages and terminate this Agreement in accordance with clause 22 (Termination) of this Agreement.

12.5 In the event of a breach of the Contract in accordance with clause 12, the Supplier shall, at the End User's request, accept the return of part or all of the Solution and make an appropriate reduction to the Charges payable during the Contract.

### **13. END USER'S OBLIGATIONS & RESPONSIBILITIES**

13.1 The End User shall not, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the Solution.

13.2 The End User shall during the term:

13.2.1 co-operate with the Supplier in any manner reasonably required by the Supplier, when accepting Delivery and installation of and engaging in the use of the Solution including provision of information and data, making available suitably qualified employees and contractors of the End User and, subject to the Supplier's compliance with the End User's normal security requirements, the End User shall:

- a) provide access to the relevant systems at the Site for the purpose of delivering the Solution provided that such access shall be direct or remote, at the End User's option, and that, in the latter case, it will be subject to the Supplier's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by the Supplier;
  - b) provide such further access for the Supplier to the Site as is necessary to carry out the Supplier's obligations under this Agreement. The End User shall obtain for the Supplier all permissions necessary to obtain such access; and
  - c) when the Supplier's staff are working on the Site, provide facilities and supplies reasonably required by the Supplier, such as power and computer consumables;
- 13.2.2 ensure that the Supplies are kept and operated in a suitable environment as determined by the End User, used only for the purposes for which they are designed, and operated in a proper manner by competent staff in accordance with any operating instructions provided by the Supplier;
- 13.2.3 take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to ensure, so far as is reasonably practicable, that the Supplies are at all times safe and without risk to health when they are being set, used, cleaned or maintained by a person at work;
- 13.2.4 maintain at its own expense the Supplies in good and substantial repair in order to keep them in as good an operating condition as they were on the Installation Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Supplies;
- 13.2.5 make no alteration to the Supplies and shall not remove any component from the Supplies without the prior written consent of the Supplier unless carried out to comply with any mandatory modifications required by law or any regulatory authority or unless the component is replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. If the Supplies are leased to the End User, title in all substitutions, replacements, renewals made in or to the Supplies shall continue to vest in the Supplier immediately upon installation;
- 13.2.6 keep the Supplier fully informed of all material matters relating to the Solution;
- 13.2.7 if the Supplies are leased or, where the Supplies are sold to the End User, at any time before the Supplies are paid for in full:
- a) keep the Supplies at all times at the Site and shall not move or attempt to move any part of the Supplies to any other location without the Supplier's prior written consent;
  - b) permit the Supplier or its duly authorised representative to inspect the Supplies at all reasonable times and for such purpose to enter upon the Site or any premises at which the Supplies may be located, and shall grant reasonable access and facilities for such inspection;

- c) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or Maintenance), sell or offer for sale, underlet or lend the Supplies or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- d) not, without the prior written consent of the Supplier, attach the Supplies to any land or building so as to cause the Supplies to become a permanent or immovable fixture on such land or building. If the Supplies does become affixed to any land or building then the Supplies must be capable of being removed without material injury to such land or building and the End User shall repair and make good any damage caused by the affixation or removal of the Supplies from any land or building and indemnify the Supplier against all losses, costs or expenses incurred as a result of such affixation or removal;
- e) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Supplier in the Supplies and, where the Supplies has become affixed to any land or building, the End User must take all necessary steps to ensure that the Supplier may enter such land or building and recover the Supplies both during the Term of this Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Supplier of any rights such person may have or acquire in the Supplies and a right for the Supplier to enter onto such land or building to remove the Supplies;
- f) not suffer or permit the Supplies to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Supplies is so confiscated, seized or taken, the End User shall notify the Supplier and the End User shall at its sole expense use its best endeavours to procure an immediate release of the Supplies and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- g) not use the Supplies for any unlawful purpose;
- h) ensure that at all times the Supplies remain identifiable as being the Supplier's property where and wherever possible shall ensure that a visible sign to that effect is attached to the Supplies, by the Supplier;
- i) deliver up the Supplies at the end of the Term or on earlier termination of this Agreement at such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to the Site or any premises where the Supplies is located for the purpose of removing the Supplies; and

13.2.8 not do or permit to be done anything which could invalidate the insurances referred to in clause 17 (Liability and Insurance).

13.3 The End User shall, at its own expense, provide the equipment necessary at the Site to enable the access referred to in clause 13.2.1 in accordance with the Statement of Works in all material respects, but all other costs and expenses for such access shall be borne by the Supplier.

13.4 The End User may restrict access to certain areas of its Site, premises or systems on security grounds.

- 13.5 The End User shall, no later than the Start Date, appoint and maintain for the duration of this Agreement, an End User Representative and a deputy to that individual, and shall notify the Supplier of the names of those individuals promptly on their appointment.
- 13.6 The End User shall comply, as soon as reasonably practicable, with all the Supplier's reasonable requests for information or assistance.
- 13.7 The End User acknowledges that the Supplier shall not be responsible for any loss of or damage to the Supplies arising out of or in connection with any negligence, misuse, mishandling of the Supplies or otherwise caused by the End User or its officers, employees, agents and contractors, and the End User undertakes to indemnify the Supplier on demand against the same, and against all direct losses, liabilities, claims, damages, costs or reasonable expenses of whatever nature otherwise arising out of or in connection with any failure by the End User to comply with this clause 13.7. The Supplier shall mitigate its losses under this clause 13.7.

#### **14. TITLE AND RISK**

- 14.1 Risk in the Solution and all other elements provided shall pass to the End User on Acceptance.
- 14.2 Where the End User is purchasing any part of the Solution (except the Software) outright, title shall pass to the End User upon full payment of all Charges.
- 14.3 Where the End User is purchasing a licence to use the Software, title to the Software shall rest with the Supplier.
- 14.4 Where the End User is purchasing the Software, title to the Software shall pass to the End User upon full payment of the Charges in respect of such Software.
- 14.5 Where leasing the Supplies, title shall remain with the Supplier.

#### **15. INTELLECTUAL PROPERTY RIGHTS**

- 15.1 The Intellectual Property Rights in the Solution are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence over such Intellectual Property Rights to any other party or parties.
- 15.2 The Supplier grants to the End User a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use the Supplier's Intellectual Property Rights provided by the Supplier to the End User for the purpose of providing the Solution to the End User.
- 15.3 The Supplier acknowledges that the Supplier's Intellectual Property Rights of the Solution are proprietary to the Supplier and that it may only be used and copied in accordance with this Agreement
- 15.4 The End User shall use reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Solution and shall immediately report to the Supplier any such infringement that comes to its attention. In particular, the End User shall:
- 15.4.1 implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Software or Documentation; and
  - 15.4.2 not permit third parties to have access to the Solution without the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given access to the Solution.

15.5 The Supplier shall keep the End User indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the End User as a result of or in connection with any claim made against the End User for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Solution.

## **16. PAYMENT**

16.1 The End User shall pay the Charges to the Supplier in accordance with the Second Schedule (Payment) and by BACS payment to the designated bank account of the Supplier as notified in writing by the Supplier to the End User.

16.2 Unless stated to the contrary within the Second Schedule (Payment), the Supplier or its assignees shall invoice the End User each Quarter in arrears in accordance with the Charges and contained in the Second Schedule (Payment).

16.3 The End User shall pay invoices raised by the Supplier within 30 days of receipt.

16.4 Invoices shall be paid in full in pounds sterling.

16.5 The Charges and all other payments are net of tax. The End User shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT, which the Supplier is obliged to pay and/or collect from the End User in respect of any supply under the agreement (other than tax on the Supplier's income).

16.6 If the End User fails to make any payment due to the Supplier under this Agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 19 the End User shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The End User shall pay the interest together with the overdue amount.

16.7 The Supplier reserves the right to terminate this Agreement in accordance with clause 22 with immediate effect upon written notice if the End User fails to make a payment in accordance with this Agreement of any Charges (or any other breach of this Agreement) within 14 days of notice by the Supplier to the End User.

16.8 The Charges will remain fixed for the duration of the Contract unless detailed otherwise within the Second Schedule (Payment) or varied in accordance with the Agreement or as set out in a Statement of Works.

16.9 All amounts due under this Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

16.10 At the End User's request, the Supplier shall produce to the End User, records and accounts of the Supplier and subcontractors relevant to the Solution, including its data processing facilities, and to such of its supporting documentation and explanations from its Staff as is reasonable to ascertain compliance with this Agreement.

16.11 A request made by the End User pursuant to clause 16.10 above shall be made no more than once during any twelve-month period during the Term of the Agreement and will be subject to reasonable prior notice given to the Supplier, except to the extent that such access is required by the End User's regulators outside of these parameters.

16.12 If, on such examination of the documents referred to in clause 16.10 the End User determines that any Charges, prices, costs or expenses exceed or fall short of the amounts properly chargeable to, or recoverable from, the End User, an appropriate adjustment shall be promptly effected between the Parties.

16.13 If the Supplier visits a Site at the End User's request in order to investigate a failure of the Solution which proves in the Supplier's reasonable opinion not to have been caused by a Defect, the Supplier may charge the End User for the time spent on such visit on a time-and-materials basis at its standard rates then in force.

## **17. LIABILITY AND INSURANCE**

17.1 Nothing in this Agreement shall exclude or in any way limit:

17.1.1 either party's liability for death or personal injury caused by its own negligence;  
or

17.1.2 either party's liability for fraud, fraudulent misrepresentation or warranty in relation to this Agreement which is or becomes materially incorrect; or

17.1.3 liability for any breach of the terms implied by section 8 of the Supply of Goods (Implied Terms) Act 1973 or any other liability which cannot be excluded by law;  
or

17.1.4 indemnity provided at clause 21.2 (data protection breach) from the Supplier to the End User

17.2 Without prejudice to clause 17.1, the Supplier's maximum aggregate liability for breach of this Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed £5,000,000 in respect of any one or a series of claims arising from the one event, with the exception of clause 21.1, where the maximum liability for any such breach shall be governed by Data Protection Legislation.

17.3 Without prejudice to clause, 17.1, the End User's aggregate liability to the Supplier under this Agreement and any and all Statements of Work shall not exceed the Contract value unless agreed otherwise with the Supplier £[X].

17.4 The Supplier must take out and maintain insurance adequate to cover the risks set out in the Contract and for a period of 6 years thereafter and in any event, shall take out and maintain:

17.4.1 Product Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise;

17.4.2 Public Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise;

17.4.3 Employer Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or a series of claims that may arise; and

17.4.4 Professional Indemnity Insurance coverage of not less than two million pounds sterling (£2,000,000) for any one, or a series of claims that may arise.

- 17.5 The Supplier will take out and maintain such insurances as set out in this clause 17 with a reputable insurance company and shall at the End User's request provide evidence of the insurance policy or policies and of payment of the premiums. Supplier's failure to maintain such insurances shall be treated as a material breach of the Contract and shall give End User the right to terminate the Contract in accordance with clause 22 (Termination).
- 17.6 With the exception of Clause 15 Intellectual Property Rights, neither Party shall be liable under this Agreement for any:
- 17.6.1 loss of profit; or
  - 17.6.2 loss of revenue; or
  - 17.6.3 loss of business or goodwill; or
  - 17.6.4 indirect, special or consequential loss or damage,  
in each case, however caused, even if foreseeable.
- 17.7 Where leasing the Supplies as part of a Solution the End User shall, at its own expense, obtain and maintain the following insurances:
- 17.7.1 insurance of the Supplies to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
  - 17.7.2 insurance for such amounts as a prudent owner or operator of the Supplies would insure for, or such amount as the Supplier may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Supplies; and
  - 17.7.3 insurance against such other or further risks relating to the Supplies as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the End User.
- 17.8 All such insurance policies procured by the End User shall be endorsed to provide the Supplier with at least 30 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Supplier's request name the Supplier on the policies as a loss payee in relation to any claim relating to the Supplies.
- 17.9 Where leasing the Supplies as part of a Service the End User shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Supplies arising out of or in connection with the End User's possession or use of the Supplies.
- 17.10 If the End User fails to effect or maintain any of the insurances as required by clause 17.4, the Supplier shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the End User.
- 17.11 The End User shall, on demand, supply copies of such relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

## **18. REMEDIES**

- 18.1 If the Supplier fails to deliver the Solution on the Delivery Date or if the Solution do not comply with the undertakings set out in the Statement of Works, then, without limiting any of its other rights or remedies, the End User shall have the right to any one or more of the following remedies:
- 18.1.1 to terminate the Contract with immediate effect;
  - 18.1.2 to reject the Solution (in whole or in part) and (in the case of Supplies) return them to the Supplier at the Supplier's own risk and expense;
  - 18.1.3 to require the Supplier to re-perform, repair or replace the rejected Solution, or to provide a full refund of the price of the rejected Solution (if paid);
  - 18.1.4 to refuse to accept any subsequent performance of the Solution which the Supplier attempts to make;
  - 18.1.5 to recover from the Supplier any costs incurred by the End User in obtaining substitute Supplies, Software, Documentation and/or Services from a third party; and
  - 18.1.6 to claim damages for any other costs, loss or expenses incurred by the End User which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 18.2 The Contract shall apply to any substituted or remedial services and/or repaired, or replacement Supplies, Software, Documentation or Services supplied by the Supplier.

## **19. INDEMNITY**

- 19.1 The Supplier shall keep the End User indemnified in full against all direct costs, expenses, damages and losses, including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the End User as a result of or in connection with:
- 19.1.1 any claim made against the End User by a third party arising out of, or in connection with, the supply of the Solution, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
  - 19.1.2 any claim made against the End User by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Solution, to the extent that the defect in the Solution is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
  - 19.1.3 the provision of the Solution, including advice and recommendations made and accepted by the End User.
  - 19.1.4 any installation and/or any Supplies, Software, Documentation and Services and/or advice given, or anything done or omitted to be done under, or in connection with the Contract by the Supplier; and
  - 19.1.5 any damage to the End User's property or Site (including any materials, tools or patterns sent to Supplier for any purpose).
- 19.2 This clause 19 shall survive termination of the Contract.
- 19.3 The End User's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.



## 20. DISPUTE RESOLUTION

20.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it ("**Dispute**"), then, the parties shall follow the procedure set out in this clause:

20.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, a senior officer of each party shall attempt in good faith to resolve it; and

20.1.2 if the senior officers are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 45 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing ("**ADR Notice**") to the other party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 30 days after the date of the ADR notice.

20.2 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 90 day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clauses 37 and 38.

## 21. DATA PROTECTION

21.1 The Supplier must process Personal Data and ensure that any staff or contractors engaged to deliver the Solution process Personal Data only in accordance with the Fourth Schedule (Processing Data).

21.2 The Supplier indemnifies the End User against any and all Losses incurred if the Supplier breaches clause 21.1 and any Data Protection Legislation.

## 22. TERMINATION

22.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement and/or any Statement of Works with immediate effect by giving written notice to the End User if:

22.1.1 the End User fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or

22.1.2 the End User makes any statement, representation or warranty under or in relation to this Agreement which is or becomes materially incorrect; or

22.1.3 provided that if the End User is trading as a company or LLP such right to terminate falls within the exceptions permitting termination of this Agreement as stipulated in sections 233B(5) and (6) and Schedule 4ZZA of the Insolvency Act 1986 the End User:

- a) becomes insolvent or is unable to pay its debts as they fall due;
- b) has a receiver or administrator appointed;
- c) is subject to a winding up petition or a resolution for winding up; or
- d) ceases to carry on its business.

22.2 On termination of this Agreement for any reason the accrued rights and remedies of either Party as at termination shall not be affected, including the right to claim damages in respect of any event of default which existed at or before the date of termination.

22.3 The End User may voluntarily terminate this Agreement by giving at least 30 days' written notice given to the Supplier.

22.4 The End User may terminate this Agreement and/or any relevant Statement of Works as a whole or a part if the Supplier:

22.4.1 materially breaches this Agreement or relevant Statement of Works;

22.4.2 ceases to carry on its business;

22.4.3 provided that if the Supplier is trading as a company or LLP such right to terminate falls within the exceptions permitting termination of this Agreement as stipulated in sections 233B(5) and (6) and Schedule 4ZZA of the Insolvency Act 1986:

- a) becomes insolvent or is unable to pay its debts as they fall due;
- b) has a receiver or administrator appointed;
- c) is subject to a winding up petition or a resolution for winding up; or
- d) ceases to carry on its business.

22.5 Where the End User and the Supplier have made all reasonable attempts to rectify any dissatisfaction of the End User pursuant to clause 20 (Dispute Resolution) of this Agreement and the End User remains dissatisfied with the Supplier in respect of the Supplier's obligations under this Agreement, the End User reserves the right to terminate this Agreement in whole or part and request the Supplier to remove the Solution with no penalty incurred by the End User.

## **23. CONSEQUENCES OF TERMINATION**

23.1 Upon termination of this Agreement, however caused:

23.1.1 with the exception of Supplies that have been purchased by the End User, the Supplier's consent to the End User's possession and use of the Solution shall terminate and the Supplier may, by its authorised representatives, with notice and at the Supplier's expense, retake possession of the Solution and for this purpose may enter the Site or any premises at which the Supplies is located;

23.1.2 without prejudice to any other rights or remedies of the End User and with the exception of Supplies which have been purchased by the End User, the End User shall pay to the Supplier all undisputed Charges and other sums due but unpaid at the date of termination with any interest accrued pursuant to clause 16.6 for any affected Statement of Works.

- 23.2 Upon termination of this Agreement in accordance with clause 22.1 and clause 22.3, without prejudice to any other rights or remedies of the Supplier, the End User shall pay to the Supplier on demand an agreed sum no greater than the whole of any lease payments detailed within the Second Schedule that would (but for the termination) have been payable if the Agreement had continued from the date of such demand to the end of the lease period detailed within the Statement of Works, less the discount to be agreed amongst the Parties and being no less than 3% of the aggregate lease payments for the affected Statement of Works.
- 23.3 The sums payable pursuant to clause 23.1.2 and clause 23.2 shall be the agreed and final compensation for the Supplier's loss and shall be its only remedy.
- 23.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## **24. CONFIDENTIAL INFORMATION**

- 24.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs.
- 24.2 Each party may disclose the other party's Confidential Information:
- 24.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this clause 24; and
  - 24.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 24.3 No party shall use any other party's Confidential Information for any purpose other than to perform its obligations under this Agreement.

## **25. ASSIGNMENT AND OTHER DEALINGS**

- 25.1 Neither party may assign, transfer, mortgage, charge, subcontract or declare a trust over this Agreement (in whole or in part) without the other party's agreement in writing which shall not be unreasonably withheld.
- 25.2 Where it is agreed in writing between the parties that the supply of the Solution is subcontracted (in whole or in part), the Supplier shall be responsible for the obligations, defaults or neglect of any sub-contractor, as if they were the acts, defaults or neglect of the Supplier.

## **26. THIRD PARTY RIGHTS**

- 26.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 26.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

## **27. FORCE MAJEURE**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for [one] calendar month, the party not affected may terminate this agreement by giving five days' written notice to the affected party, or both Parties may vary the terms of the Agreement in accordance with Clause 30.

## **28. ENTIRE AGREEMENT**

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

## **29. COUNTERPARTS**

29.1 This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute a duplicate original, but both of the counterparts shall together constitute the one agreement.

## **30. VARIATION**

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

## **31. NO PARTNERSHIP OR AGENCY**

31.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

31.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## **32. FURTHER ASSURANCE**

32.1 At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

## **33. NOTICES**

33.1 Any notices given by the Supplier or the End User to the other under or in connection with this Agreement shall be in writing and shall be:

33.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at [SPECIFY RELEVANT ADDRESSES OF SUPPLIER AND END USER]; or

33.1.2 sent by email to the address specified in [SPECIFY RELEVANT EMAIL ADDRESSES OF SUPPLIER CONTACT AND END USER CONTACT]

33.2 Any notice shall be deemed to have been received:

33.2.1 if delivered by hand, on signature of a delivery receipt;

33.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service;

33.2.3 if sent by email, at 9.00am on the next Business Day after transmission.

33.3 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.

#### **34. WAIVER**

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

#### **35. RIGHTS AND REMEDIES**

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

#### **36. SEVERANCE**

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

36.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **37. GOVERNING LAW**

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

#### **38. JURISDICTION**

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

# First Schedule

## Statement of Works

*(Insert details of the Statement of Works. Please note the headings are for guidance only and can be retained if required)*

Supplies:

Software:

Documentation:

Services:

Maintenance :

Sites:

Delivery date:

Installation date:

Training:

Manufacturers' Warranties:

Reference standard:

Start date:

End date:

Bespoke terms and conditions to apply to this Statement of Work only:

## **Second Schedule**

### **Payment Schedule**

*(Insert details of the Charges levied upon the End User by the Supplier in respect of the delivery of the Solution)*

## **Third Schedule**

### **Service Levels**

*(Insert details of the service standards/ expectations. These should include as a minimum the key performance indicators that apply to each aspect of the Solution)*

Key performance indicators:



# Fourth Schedule

## Processing Data

### Status of the Controller

1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement dictates the status of each Party under the Data Protection Legislation. A Party may act as:
  - a. “Controller” in respect of the other Party who is “Processor”;
  - b. “Processor” in respect of the other Party who is “Controller”;
  - c. “Joint Controller” with the other Party; or
  - d. “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under this Agreement and shall specify in Annex 1 (Processing Personal Data) which scenario they think shall apply in each situation.

### Where one Party is Controller and the other Party its Processor

2. Where a Party is a Processor, the only processing that it is authorised to do is listed in Annex 1 (Processing Personal Data) by the Controller.
3. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
4. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
  - a. a systematic description of the envisaged Processing and the purpose of the Processing;
  - b. an assessment of the necessity and proportionality of the Processing in relation to the Solution;
  - c. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - d. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
5. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Agreement:
  - a. Process that Personal Data only in accordance with Annex 1 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
  - b. ensure that it has in place appropriate technical and organisational measures which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the technical and organisational measures) having taken account of the:

- i. nature of the data to be protected;
    - ii. harm that might result from a Data Breach;
    - iii. state of technological development; and
    - iv. cost of implementing any measures;
  - c. ensure that:
    - i. the Processor Personnel do not Process Personal Data except in accordance with this Agreement (and in particular Annex 1 (Processing Personal Data));
    - ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they are:
      - A. are aware of and comply with the Processor's duties under this Fourth Schedule and Clause 24 (Confidential Information);
      - B. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
      - D. have undergone adequate training in the use, care, protection and handling of Personal Data;
  - d. not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
    - ii. the Data Subject has enforceable rights and effective legal remedies;
    - iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
    - v. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Agreement unless the Processor is required by Law to retain the Personal Data.
- 6. Subject to paragraph 7 of this Fourth Schedule, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this Agreement it:
  - a. receives a Data Subject Request (or purported Data Subject Request);
  - b. receives a request to rectify, block or erase any Personal Data;
  - c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- d. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Agreement;
  - e. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - f. becomes aware of a Data Breach.
7. The Processor's obligation to notify under paragraph 6 of this Fourth Schedule shall include the provision of further information to the Controller in phases, as details become available.
8. Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 6 of this Fourth Schedule (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - a. the Controller with full details and copies of the complaint, communication or request;
  - b. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - c. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - d. assistance as requested by the Controller following any Data Breach; and/or
  - e. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
9. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Fourth Schedule.
10. The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
11. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
12. Before allowing any Subprocessor to Process any Personal Data related to this Agreement, the Processor must:
  - a. notify the Controller in writing of the intended Subprocessor and Processing;
  - b. obtain the written consent of the Controller;
  - c. enter into a written agreement with the Subprocessor which give effect to the terms set out in this Fourth Schedule such that they apply to the Subprocessor; and
  - d. provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
13. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
14. The End User may, at any time on not less than 30 Working Days' notice, revise this Fourth Schedule 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 incorporated by attachment to this Agreement).

15. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The End User may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **Where the Parties are Joint Controllers of Personal Data**

16. In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement paragraphs that are necessary to comply with GDPR Article 26.

#### **Independent Controllers of Personal Data**

17. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
18. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
19. Where a Party has provided Personal Data to the other Party in accordance with paragraph 7 of this Fourth Schedule, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
20. The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the Processing of Personal Data for the purposes of this Agreement.
21. The Parties shall only provide Personal Data to each other:
  - a. to the extent necessary to perform their respective obligations under this Agreement;
  - b. in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the GDPR); and
  - c. where it has recorded it in Annex 1 (Processing Personal Data).
22. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply

with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.

23. A Party Processing Personal Data for the purposes of this Agreement shall maintain a record of its Processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
24. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (“Request Recipient”):
  - a. the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
  - b. where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
    - i. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
    - ii. provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
25. Each Party shall promptly notify the other Party without due delay of it becoming aware of any Data Breach relating to Personal Data provided by the other Party pursuant to this Agreement and shall:
  - a. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
  - b. implement any measures necessary to restore the security of any compromised Personal Data;
  - c. work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - d. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
26. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Annex 1 (Processing Personal Data).
27. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under this Agreement which is specified in Annex 1 (Processing Personal Data).
28. Notwithstanding the general application of paragraphs 2 to 15 of this Fourth Schedule, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with paragraphs 16 to 27 of this Fourth Schedule.

## Annex 1 – Processing Personal Data

<b>The Subject matter and duration of Processing</b>	<p>The Parties will Process Personal Data in the context of: [Describe the relevant services and describe how long the Personal Data will be Processed for – will this be determined by a time period or for as long as the purpose continues?</p> <p>Consider longevity of the Contract and if the Personal Data will need to be retained post termination of the Contract.</p>
<b>The nature and purpose of Processing</b>	<p>The Processing will be for the purpose of –</p> <p>[Describe what processing of Personal Data will take place and for what purpose e.g. for the provision of IT services to students, records, usernames, emails etc...]</p>
<b>The type of Personal Data being Processed</b>	<p>The Personal Data will include –</p> <p>[Names, email addresses, postal addresses, ip address, username, NI number, password, etc]</p>
<b>The Categories of Data Subjects</b>	<p>The Data Subjects will include –</p> <p>[e.g. Contractors, students, employees, etc]</p>

## Fifth Schedule

### TUPE On Exit

1. In this Schedule 5 the following definitions apply:

**Liabilities:** all costs, claims, liabilities and expenses (including reasonable legal expenses and liability to taxation).

**New Supplier:** another party chosen by the End User to provide services which are identical or substantially similar to any or all of the Works following termination or expiry of this agreement or relevant Statement of Work.

**Transferring Employees:** those persons listed in a Schedule to be agreed by the Parties prior to the Subsequent Transfer Date who it is agreed were employed by the Supplier wholly and/or mainly in the relevant Works immediately before the Subsequent Transfer Date.

**Subsequent Transfer Date:** means the date or dates on which there is a transfer of responsibility for the provision of the Works or part of the Works between the Supplier and the End User and/or a New Supplier (as the case may be).

**Works:** the services to be provided by the Supplier under the terms of this Agreement, including the Solution and services which are incidental or ancillary to the Solution.

2. The parties acknowledge and agree that where all or part of the Works cease to be provided by the Supplier for any reason and where all or part of the Works continue to be provided by the End User and/or a New Supplier, there may be a relevant transfer of the Transferring Employees to the End User and/or the New Supplier for the purposes of TUPE. If there is such a transfer, the employment of the Transferring Employees shall transfer to the End User and/or the New Supplier in accordance with TUPE with effect from the Subsequent Transfer Date.
3. The Supplier undertakes to the End User that it shall pay all sums due to or in relation to the Transferring Employees attributable to the period up to and including the Subsequent Transfer Date (whether arising under common law, statutes, equity or otherwise) including all salaries, wages, bonus or commission, expenses, holiday pay, National Insurance and pension contributions, liability to taxation and other sums payable in respect of any period up to and including the Subsequent Transfer Date.
4. Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Transferring Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Transferring Employees to the End User and/or the New Supplier.
5. The Supplier shall, not later than 6 months prior to the expiry of this Agreement or the relevant Statement of Work, to the extent lawfully permitted provide the End User with the following details:
  - a. a list of those personnel engaged in the Works (Potential Transferring Employees);

- b. job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Transferring Employees;
- c. terms and conditions of employment of the Potential Transferring Employees, including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996;
- d. any current disciplinary or grievance proceedings ongoing in respect of the Potential Transferring Employees and any such proceedings in the preceding two years;
- e. any claims, current or which the Supplier has reasonable grounds to believe will be brought by the Potential Transferring Employees or their representatives or which have been brought in the preceding two years;
- f. all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Transferring Employees;
- g. information on any collective agreements which will have effect in relation to the Potential Transferring Employees after the Subsequent Transfer Date pursuant to TUPE; and
- h. such additional information in respect of the Potential Transferring Employees as the End User may reasonably require.

The Supplier shall provide updates of the details listed above at regular intervals to be specified by the End User and shall indemnify the End User (both for itself and a New Supplier) against all Liabilities incurred by the End User and/or a New Supplier in connection with or as a result of any inaccuracy in such information or updated information.

6. The Supplier shall indemnify the End User (both for itself and a New Supplier) against all Liabilities incurred by the End User and/or a New Supplier in connection with or as a result of:
  - a. The employment of any Transferring Employee or the termination of their employment by the Supplier on or before the Subsequent Transfer Date;
  - b. any claim or demand by any Transferring Employee or a trade union or other body or person representing a Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any circumstances or act, fault or omission of the Supplier on or before the Subsequent Transfer Date;
  - c. any failure by the Supplier to comply with its legal obligations in respect of any Transferring Employees;
  - d. any act or omission before the Subsequent Transfer Date which, by virtue of TUPE, is deemed to be an act or omission of the End User and/or any New Supplier
  - e. any failure by the Supplier to comply with its obligations under TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the End User and/or New Supplier to comply with its or their duties under regulation 13 of TUPE; and
  - f. a claim by any person who transfers or alleges that their employment has transferred to the End User or the New Supplier but whose name is not included in the list of Transferring Employees.
  
7. The Supplier shall, at its own expense, give the End User and any New Supplier such assistance as they may reasonably require to contest any demand by any person employed or engaged by the Supplier in the Works at or before the Subsequent Transfer Date or their representatives resulting from or in connection with this Agreement, subject always to the Supplier's obligations under data protection legislation.



8. If TUPE applies to transfer the employment of any person employed by the Supplier to the End User or any New Supplier then if the End User or such New Supplier shall serve a notice terminating the employment of such person within six months after the date of such transfer, the Supplier shall indemnify the End User (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the End User is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

**SIGNED** by )  
[a director] for and on behalf of [SUPPLIER]: )

[Director]

**SIGNED** by )  
[ ] for and on behalf of [END USER]: )