



Managed Services

Terms and Conditions



MANAGED SERVICES TERMS AND CONDITIONS

This agreement between the Service Provider, Intelligence Group Ltd (hereinafter “igroup”), whose registered office is at Sci-Tech Daresbury, Vanguard House, Keckwick Lane, WA4 4AB and the Customer.

- (1) The customer wishes to receive support and or consultancy services.
- (2) The service provider has the skills background and experience in providing the same.
- (3) The Service Provider is willing to provide the support and or consultancy services (as defined in the schedules) and the Customer wishes to receive them.

The Customer wishes to receive certain software related managed services from the Supplier and the Supplier is willing to provide such services to the Customer on the terms and conditions set out in this managed services agreement (“the Managed Services Agreement”).

1. DEFINITIONS

“**Acceptance**” shall where applicable mean acceptance of the Managed Services by the Customer following the completion of acceptance testing;

“**Application Frameworks**” shall mean the Supplier’s application frameworks background intellectual property comprising information and software owned or controlled by the Supplier which are an integral part of the provision of the Managed Services;

“**Business Day**” means 9:00 am – 5:00 pm Monday to Friday, excluding the statutory bank holidays of the United Kingdom;

“**Commencement Date**” shall mean the date specified in the MS Schedule or the date upon which the Managed Services are made reasonably available to the Customer, whichever shall be the earlier;

“**Completion Date**” shall mean the agreed delivery date for any of the Managed Services;

“**Delivery**” shall mean delivery of the Managed Services to the Customer;

“**Fees**” shall mean the fees payable by the Customer to the Supplier as due consideration for the supply of the Managed Services as defined within the MS Schedule;

“**Confidential Information**” means all information disclosed by one of the Parties to the other, whether before or after the effective date of the Managed Services Agreement, that the recipient should reasonably understand to be confidential, including: (i) for the Customer, all information transmitted to or from, or stored on, the Supplier Cloud System, (ii) for the Supplier, unpublished prices and other terms of service, audit and security reports, product development plans, data centre designs (including non-graphic information that may be observed on a tour of a data centre), server configuration designs, and other proprietary information or technology, and (iii) for both Parties, information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of the Parties on their own, without reference to the other’s Confidential Information, or that becomes available to one of the Parties other than through breach of the Managed Services Agreement or applicable law, shall not be Confidential Information of the other Party;

“**Cloud System**” shall mean the Microsoft Azure® cloud based hosting service;

“**Current Software Release**” shall mean the current release of the Microsoft® Software which includes fixes and/or enhancements to the Microsoft® Software and as from time to time stipulated by the Supplier and/or Microsoft® as being the latest version of the Microsoft® Software;



“Force Majeure” shall mean any cause beyond a Party’s reasonable control including without limitation, acts of God, war, terrorism, fire, flood or other accident, strike, lockouts, delays in transport, material shortages, failures or fluctuations in electric power or telecommunications services or equipment, restrictions or prohibitions of any government or semi-government authority;

“Customer Group” shall mean the Customer and a holding company or a subsidiary (as the case may be) of the Customer as defined in section 1159 of the Companies Act 2006;

“Hosted Services” shall mean any of the hosted services that may be provided to the Customer and that may be detailed within the relevant MS Schedule;

“Insolvency Event” shall mean an event where a Party either ceases or threatens to cease conducting its business in the normal manner; or is treated as being insolvent, or threatens or is in jeopardy of becoming insolvent because it: (a) is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986); or (b) makes or offers to make any arrangement or composition with any one or more of its creditors; or (c) commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against it; or (d) any resolution or petition to wind up it up (being a limited company) is issued or passed or presented otherwise than for reconstruction or amalgamation; or (e) has had a receiver, administrator or liquidator appointed to it;

“Intellectual Property Rights” (“IPR”) shall mean patents, design rights, trademarks, copyrights (including any such rights in typographical arrangements, websites or software), rights subsisting in trading, business or domain names and e-mail addresses, rights in inventions, rights in databases and all other intellectual property rights of a similar or corresponding character which subsist now or in the future in any part of the world whether registered or not and whether or not capable of registration, and any applications to register or rights to apply for registration of any of the foregoing in all parts of the world;

“Managed Service(s)” shall mean any of the managed services to be provided by the Supplier as individually described in each Managed Service Schedule;

“Managed Service Schedule (MS Schedule)” shall mean an individual schedule to this Managed Services Agreement which defines the scope, deliverables and key terms relating to that specific Managed Service;

“Microsoft®” shall mean Microsoft Corporation of One Microsoft Way, Redmond, WA, USA;

“Microsoft® Software Licence” shall mean the licence for the Software as made and agreed direct between the Customer and Microsoft® except to the extent otherwise agreed between the Parties pursuant to the provisions of this Managed Services Agreement.

“Order” means either: (i) the online order that the Customer submits to the Supplier via the Supplier’s website, or (ii) any written order (either in electronic or paper form) provided by the Customer to the Supplier, or (iii) any written order (either in electronic or paper form) provided to the Customer by the Supplier for signature that describes the Managed Services the Customer is purchasing, and that is signed by the Customer, either manually or electronically;

“Online Control Panel” shall mean the online central access portal which can be used *interalia* to check the progress of support tickets raised with the Supplier;

“Out of Scope Fees” shall mean the fees applicable to the provision of out of scope services in accordance with the Supplier’s rates as published from time to time;

“Personally Identifiable Information” or “PII” means a combination of any information that identifies an individual with that individual’s sensitive and non-public financial, health or other data or attribute, such as a combination of the individual’s name, address, or phone number with the individual’s national



insurance number or other government issued number, financial account number, date of birth, address, biometric data, mother's maiden name, or other "Personal Data" or "Special Categories of Data" as defined in the Directive 95/46/EC and the Data Protection Act 1998;

"Service Levels" shall mean the service levels to be met by the Supplier as detailed within the relevant MS Schedule;

"Microsoft® Software" shall mean any of the Microsoft® SharePoint®, Azure®, Dynamics 365® or Office 365® which is licensed to the Customer by Microsoft®, except to the extent otherwise agreed between the Parties pursuant to the provisions of this Managed Services Agreement;

"Support Services" shall mean any of the support services that may be provided by the Supplier and as detailed within the relevant MS Schedule;

"Term" shall mean the term specified within each respective MS Schedule commencing on the Commencement Date;

"Third Party Software" shall mean any software provided to the Customer by a third party other than Microsoft®;

"Third Party Software Licence" shall mean a licence for Third Party Software as made and agreed direct between the Customer and a third party software provider other than Microsoft®.

2 SCOPE OF MANAGED SERVICES

2.1 The Supplier will provide the Managed Services as more particularly described within the MS Schedule. Such Managed Services are provided in relation to the Microsoft® Software licensed to the Customer by Microsoft® under the terms of the Microsoft® Software Licence or in relation to Third Party Software (where applicable).

2.2 The Supplier will provide the Managed Services in accordance with this Managed Services Agreement for the Term except as otherwise provided within this Managed Services Agreement.

3. WARRANTIES

3.1 The Supplier warrants that:

3.1.1 the Managed Services will be of satisfactory quality;

3.1.2 the performance of the Managed Services will not infringe the patent, trade mark, copyright, design right or other intellectual property right of any third party in any territory (this warranty does not apply if an infringement results from a design or specification expressly dictated by the Customer);

3.1.3 the Managed Services will be provided under proper supervision, with reasonable skill and care, in a professional manner by suitably trained, skilled and experienced professionals, and to such standard as can reasonably be expected from a supplier which is experienced and skilled in the provision of such Managed Services; and

3.1.4 the Supplier will use its commercially reasonable endeavours to meet the Service Levels as may be applicable and defined within the MS Schedule and to perform and complete the Managed Services in accordance with any agreed project timetables or milestones, subject to the Customer's fulfilment of its obligations under the terms of this Managed Services Agreement. The Supplier does not promise that the Managed Services will be uninterrupted, error-free, or completely secure. The Customer acknowledges and accepts that there are risks inherent in internet connectivity that could result in the loss of its privacy, Confidential Information and property.

3.2 EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SUPPLIER MAKES NO WARRANTY,

EXPRESS OR IMPLIED, RESPECTING THE SOFTWARE AND/OR THE SERVICES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NOTHING IN THIS MANAGED SERVICES AGREEMENT EXCLUDES LIABILITY FOR FRAUD.

- 3.3 If any part of the Services is performed negligently or in breach of the provisions of this Managed Services Agreement then, at the request of the Customer (if given within 7 days of the Completion Date) the Supplier shall re-perform the relevant part of the Services, (subject to clause 3.5 below). In the event that the Supplier reasonably considers that any fault of the Customer prevents the supply of the Services then the Supplier shall serve written notice of such upon the Customer, failing which any such occurrence shall not be considered to be the Customer's fault.
- 3.4 The Supplier does not promise that the Services will be uninterrupted, error-free, or completely secure. The Customer acknowledges and accepts that there are risks inherent in internet connectivity that could result in the loss of its privacy, Confidential Information and property.
- 3.5 The Customer shall indemnify the Supplier from and against all claims and losses arising from loss, damage, liability, injury to the Supplier's employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising from any negligent act or omission on the part of the Customer, its employees or agents within or without the scope of this agreement. "Claims" shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal, civil, in contract, tort or otherwise) and "Losses" shall mean all losses without limitation, financial losses, damages, legal costs and other expenses of any nature whatsoever.

4. SECURITY

- 4.1 The Customer shall use all reasonable and appropriate security measures in connection with the Customer's use of the Managed Services and shall accordingly be solely responsible for maintaining an appropriate level of both physical and network/IT based security of its working operating environment so as to ensure that the proper provision of the Managed Services by the Supplier shall not be unduly prejudiced or prevented and that the provision of the Managed Services does not unduly compromise the security of the Customer's operating environment.
- 4.2 Pursuant to the terms of clause 4.1, the Customer shall be responsible for undertaking such testing as shall be deemed reasonably necessary in order to ensure that the Managed Services provided by the Supplier can be deployed safely and successfully within the Customer's environment. Accordingly, the Supplier shall not be held responsible in any way for any breaches of security or for being prevented from providing the Managed Services to the extent that the same results from the Customer's failure to act in accordance with the terms of this clause.
- 4.3 The Customer is responsible for keeping all usernames and passwords confidential.
- 4.4 The Customer shall immediately notify the Supplier of any unauthorised use of the Customer's account or any other known breach of security. The Supplier has no obligation to provide security other than as may be detailed within this Managed Services Agreement.

5. AVAILABILITY, SUPPORT SERVICES, PROPER USE AND OBLIGATIONS

AVAILABILITY

- 5.1 The Supplier will use its reasonable endeavours to provide to the Customer continuous access to the Managed Services. Notwithstanding this, the Supplier reserves the right to remove the Managed Services from time to time as it deems reasonably necessary in accordance with its knowledge, understanding and the Customer's requirements which shall include but not be limited to the requirement of conducting scheduled maintenance.



- 5.2 The Customer shall co-operate with the Supplier's reasonable investigation of Service outages, security problems, and any suspected breach of the Managed Services Agreement.

SUPPORT SERVICES

- 5.3 The Supplier shall provide Support Services to the Customer during the times specified under the relevant MS Schedule. Such Support Services shall include the provision of Maintenance Releases which shall be provided at no additional charge as well as the provision of New Versions to the extent that such New Versions include updates to the functionality of the Software modules originally provided to the Customer. Major releases of functionality shall not be included and may be otherwise provided by Microsoft® from time to time.
- 5.4 The provision of the Support Services is subject to the Customer using a version of the Software that is not more than one version prior to the Current Software Release.
- 5.5 The Service Levels suspend and will be invalidated if the Customer remains on unsupported software, and any support issues arising from the unsupported software will be chargeable.
- 5.6 Upon signing this Managed Services Agreement the Customer shall supply to the Supplier two named technical contacts with whom the Supplier is to liaise and who shall provide to the Supplier any documentation, source code and system access as required for the Supplier to provide the Managed Services.

PROPER USE

- 5.7 The Customer shall use the Managed Services in a manner which is consistent with the terms of this Managed Services Agreement and with any recommendations as may be made by the Supplier from time to time. Accordingly, the Supplier shall not be responsible for the consequences of any changes made by the Customer to the Managed Services themselves or to anything which may affect the proper delivery or performance of the Managed Services.

UNAUTHORISED ACTIVITY

- 5.8 The Supplier shall not be liable (and shall accordingly be absolved of any responsibility for the achievement of the Service Levels defined in each MS Schedule) in the event that any faults or issues develop as a result of any of the following events (not by way of limitation):
- 5.8.1 a relocation or a modification of the Software or Managed Services (including but not limited to by the Customer or a third party adding to or interfacing the Software or Managed Services with other software) which is neither carried out nor approved by the Supplier;
 - 5.8.2 improper use or abuse of the Software or Managed Services by any person other than the Supplier;
 - 5.8.3 any use of the Software or Managed Services by a person other than the Supplier which contravenes an express written instruction or recommendation reasonably given by the Supplier to the Customer in relation to the Software or Managed Services;
 - 5.8.4 an event of Force Majeure;
 - 5.8.5 loss of or damage to any files or data where the Customer has failed to keep backups in line with either the Supplier's recommendations (where applicable) or generally accepted industry standards in relation to the maintenance of back-ups;
 - 5.8.6 any issues which cannot be diagnosed because of a lack of available and appropriate network connectivity.
- 5.9 If a fault or issue arises as a result of any of the events described in clause 5.8 then, if requested to do so, the Supplier may attend to such fault or issue and charge the Customer on a time and

materials basis in accordance with its then Out of Scope Fees, even if such attendance is purely conducted with the objective of ascertaining the cause of the actual fault or issue to the extent that this is unknown or uncertain.

- 5.10 In the event that the Customer requires to make changes which are not recommended by the Supplier to either the Managed Services, Software or operating systems, and further requires the Supplier to implement such changes, then the Supplier may agree to undertake such work on the basis that the Supplier shall charge the Customer for such work and the Supplier shall be absolved of any responsibility for the achievement of the Service Levels defined within the MS Schedule.
- 5.11 The Customer agrees to do each of the following: (i) comply with applicable law, (ii) pay when due the Fees for the Managed Services, (iii) use reasonable security precautions in connection with the Customer's use of the Managed Services, (iv) cooperate with the Supplier's reasonable investigation of Service outages, security problems, and any suspected breach of the Managed Services Agreement, (v) keep the Customer's billing contact and other account information up to date via the Online Control Panel, and (vi) immediately notify the Supplier of any unauthorised use of the Customer's account or any other breach of security.
- 5.12 The Customer acknowledges and agrees that for the Supplier to be able to provide the Managed Services the Customer shall:
- 5.12.1 Co-operate with the Supplier as the Supplier reasonably requires.
- 5.12.2 Provide to the Supplier such information as the Supplier reasonably requires and accepts that delivery may be delayed by a time at least commensurate to any related delay in the provision of information by the Customer.
- 5.12.3 Provide to the Supplier any relevant access to their environment whereby this access is needed to enable investigation into any given support issue.
- 5.13 The Supplier may charge the Customer for any additional reasonable costs and expenses incurred by the Supplier to the extent that such costs and expenses result from either the supply by the Customer of inaccurate instructions, the Customer's failure to provide such instructions or the Customer's failure to comply with clause 5.12.

6. ACCESS TO HOSTED SERVICES

- 6.1 To the extent that the Customer is to receive Hosted Services, access to the Hosted Services will be made available to the Customer in accordance with the following:
- 6.1.1 A secure User ID and password will be required to gain access to the Hosted Services;
- 6.1.2 Access to the Hosted Services will be provided where a valid user session is available for the specified user. Additional sessions may be purchased at an additional cost if required;
- 6.1.3 The Customer's personal computers are to conform to the minimum standard as may be specified by the Supplier from time to time.
- 6.1.4 The Supplier makes no representation for the speed of the Customer LAN, WAN or internet connection speeds and as such the Supplier does not guarantee the performance of any part of the Hosted Services for factors outside of its reasonable control, including but not limited to modem speeds, WAN speeds, ISP reliability or LAN traffic. This includes connectivity to the Supplier hosting centre; it is the Customer's responsibility to provide a secure route/VPN to the Supplier hosting centre.
- 6.2 The Hosted Services provided are not fault tolerant unless the Customer has purchased a fault tolerant option.

- 6.3 The Customer will not have access to its data stored on the Supplier's Cloud System during a suspension or following termination.
- 6.4 The Supplier's obligation to commence the provision of the Hosted Services is contingent on the Customer meeting the Supplier's credit approval criteria and subject to the terms set out within this Managed Services Agreement.

7. BACK-UP

The Supplier does not have knowledge of the data the Customer stores within the Supplier Cloud System, including the quantity, value or use of the data. The Customer is therefore responsible for taking all reasonable steps to mitigate the risks inherent in the provision of the Managed Services, including data loss. Although the Service may be used as a backup service, the Customer agrees that it will maintain at least one (1) additional current copy of the Customer's programs and data stored on the Supplier Cloud System somewhere other than on the Supplier Cloud System.

8. AUDIT AND SERVICE REVIEWS

- 8.1 The Supplier reserves the right to audit the number of users that are using the Managed Services on a regular basis as well as the Customer's general use of the Managed Services including (not by way of limitation) the type of servers, storage and data used and shall accordingly advise the Customer of the findings where appropriate. In the event that the Customer is using the Managed Services for a number of users that exceeds that set out in the MS Schedule, or its use of servers, storage and exceeds that originally contemplated by the Supplier, then the Supplier reserves the right to levy a charge for such excess usage from the point at which such excess usage is identified based on the prevailing rates as defined by the Supplier from time to time.
- 8.2 The Parties agree to hold a review meeting by telephone to review the delivery and performance of the Managed Services on at least a quarterly basis ('the Quarterly Review'), with each Quarterly Review having a duration not exceeding one hour, unless otherwise agreed between the Parties.
- 8.3 In the event that the Customer requests a face to face meeting either in place of the Quarterly Review or in addition to it, then the Supplier reserves the right to charge for its attendance at the same.

9. FEES AND PAYMENT TERMS

- 9.1 The Fees shall be invoiced by the Supplier quarterly in advance unless otherwise specified within the MS Schedule. Any other associated fees shall be invoiced monthly in arrears. Invoices shall be paid by the Customer in cleared funds no later than 30 calendar days from the date of the invoice ("Due Date") by bank transfer. All Fees are stated and will be charged in pounds sterling. Payment in full of the Supplier's invoices by their respective Due Date shall not in any way be contingent on payment due to the Customer by any third party.
- 9.2 If there is a dispute with respect to any portion of an invoice, the Customer shall pay the undisputed portion of the Fees promptly and provide written details specifying the basis of any dispute. Each of the Parties agree to work together to resolve promptly any disputes. Charges that are not disputed within five (5) days of the date of the invoice for the same are conclusively deemed to have been accepted.
- 9.3 In the event that the Customer fails to make payment on undisputed amounts as specified by the Due Date, then the Supplier shall be entitled to charge interest at a rate of 8% (eight percent) per annum above the Bank of England's prevailing base rate at that particular time, accruing daily.

- 9.4 The Supplier will invoice on a separate basis for any extra usage over and above that defined within this Managed Services Agreement; this includes, but not limited to extra storage, data usage or additional users.
- 9.5 The Customer hereby acknowledges that the Supplier reserves the right to obtain a credit report of the Customer at any time during the term of the Managed Services Agreement.
- 9.6 The Customer shall keep its billing contact and other account information up to date via their account manager.
- 9.7 Any credit amount that the Supplier may owe to the Customer will be off-set against any Fees due from the Customer for Managed Services, and will not be paid to the Customer as a refund.
- 9.8 The Supplier reserves the right to recharge any out of pocket expenses incurred during the course of this agreement. These fees would include, but not limited to travel (mileage at approved HMRC rates, or rail fares) and overnight accommodation. These expenses may also be charged where incurred for a meeting that the Supplier subsequently cancels or postpones.

FIXED PRICE PROJECTS

- 9.9 Invoices for fixed price projects will be raised in accordance with the MS Schedule.

CREDIT BASED PAYMENTS

- 9.10 In relation to any of the Fees which are calculated on a credit structure as detailed within the relevant MS Schedule, "day" shall mean a period of 8 hours/credits (normal working week, Monday-Friday, 9am-5pm). Depending on the Service Level and whether the work is conducted on or off site, the credits are used at varying rates.
- 9.11 The Customer must provide 7 working days' notice to cancel a booked on-site day or one-day workshop or they will be charged for one day and any travel costs already incurred.
- 9.12 For fees calculated by reference to an hourly rate, where the time required to be spent is more than the hours contracted, the Customer must first authorise the work before such work can be delivered.
- 9.13 The minimum charge for any work is 30 minutes or the consumption of 0.5 credits as appropriate.
- 9.14 The Parties shall agree that the provision of the Services shall be chargeable on a time and material basis unless a specific project specification has been agreed between the Parties in writing.

APPLICATION FRAMEWORK FEES

- 9.15 The provision of the Managed Services may include a license to use the Supplier's Application Frameworks. In such circumstances, the fees for the use of the Application Frameworks will ordinarily be included within the Fees for the Managed Services though will be separately chargeable if continued to be used beyond the expiry or termination of the Managed Services Agreement and/or the relevant MS Schedule.

10. FEE INCREASES

- 10.1 The Supplier shall reserve the right to amend the Fees should there be a change in the Supplier's costs in connection with its provision of the Managed Services including (not by way of limitation) where Microsoft® increase their fees, in which case the Supplier may correspondingly increase the Fees accordingly.

- 10.2 In the event that the Supplier has specifically based its fees on a prescribed exchange rate, then the Supplier reserves the right to amend such fees to the extent that there is a fluctuation to such exchange rate (in either direction) of 5% or more.
- 10.3 The Fees applicable to any periods following the elapse of the Term shall be subject to further discussions and agreement between the Parties.

11. SUSPENSION OF SERVICES

- 11.1 The Supplier may suspend the Customer's Managed Services without liability in the event that:
- 11.1.1 the Supplier reasonably believe that the Managed Services are being used (or have been or will be used) in breach of the Managed Services Agreement e.g. (not by of limitation) following the conduct of an audit by the Supplier;
 - 11.1.2 the Customer fails to cooperate with the Supplier's reasonable investigation of any suspected breach of the Managed Services Agreement;
 - 11.1.3 the Supplier reasonably believes that the Customer's Managed Services have been accessed or manipulated by a third party without the Customer's consent;
 - 11.1.4 the Supplier reasonably believes that suspension of the Managed Services is necessary to protect the Supplier's network or its other customers;
 - 11.1.5 a payment for the Managed Services is overdue by more than 15 days; or
 - 11.1.6 suspension is required by law.
- 11.2 The Supplier will give the Customer reasonable advance notice of a suspension under this clause and a chance to remedy the grounds on which the suspension is based, unless the Supplier determines, in its reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect the Supplier or its other customers from imminent and significant operational, legal or security risk.
- 11.3 If the suspension was based on the Customer's breach of its obligations under the Managed Services Agreement or by reason of the occurrence of any of the events set out in clause 11.1, then the Supplier may continue to charge the Customer the Fees for the Managed Services during the suspension, and may charge the Customer a reasonable reinstatement fee upon reinstatement of the Managed Services.

12. TERM AND TERMINATION

- 12.1 The Managed Services shall commence from the date hereof and shall remain in force for the initial Term and shall continue thereafter for subsequent periods of 12 months unless and until terminated by either Party providing to the other written notice of its intention to terminate the Managed Services Agreement, such notice having been served not less than 90 days prior to the end of the Term or subsequent anniversaries thereof. For the avoidance of doubt, in the event of the termination of the Managed Services Agreement all current MS Schedules shall terminate at the same time as the Managed Services Agreement.
- 12.2. The term of each MS Schedule shall be separately defined in each MS Schedule and shall accordingly continue unaffected notwithstanding the earlier termination or expiry of any other MS Schedule.
- 12.3 The Managed Services Agreement may also be terminated as follows:
- 12.3.1 if a Party becomes subject to an Insolvency Event;
 - 12.2.2 if a Party is in material breach of any of its obligations under this Managed Services Agreement (provided that where such breach is capable of remedy, the breaching Party is given 30 days to rectify such breach from the date that notice of any breach is received from the non-infringing Party);

12.3.3 the Supplier shall have the right to terminate this Managed Services Agreement in whole or in part by giving the Customer 90 days' written notice of termination;

12.3.4 if the Customer has any invoices on account which are overdue by 30 days or more.

12.4 In the event of the termination of this Managed Services Agreement and/or the termination or expiry of the relevant MS Schedule, then the Customer shall thereupon also cease to have any continued rights of use in relation to the Supplier's Application Framework IPRs and thereby any continue use of the same shall be chargeable.

12.5 The Parties shall acknowledge, as soon as reasonably possible, the receipt of any notice of termination of this Managed Services Agreement (in whole or in part) received in writing from the other Party.

12.6 It is acknowledged that it may take up to fourteen (14) days following the elapse of the notice period of termination for the Supplier to process such termination. During such time the Customer will not have access to the Managed Services. The Supplier may, but shall not be required to, maintain the data that the Customer has stored on the Supplier Cloud system for the fourteen (14) day period at no additional fee.

13. UNAUTHORISED ACCESS TO CUSTOMER'S DATA OR USE OF THE SERVICES

13.1 The Supplier shall not be responsible for unauthorised access to the Customer's data or the unauthorised use of the Managed Services unless the unauthorised access or use results from the Supplier's failure to meet its security obligations stated in the Managed Services Agreement.

13.2 The Customer is solely responsible for the use of the Managed Services by any of its employees, any person or third party company to whom the Customer has given access to the Managed Services, and any person who gains access to the Customer's data or the Managed Services as a result of the Customer's failure to use reasonable security precautions, even if such use was not authorised by the Customer.

14. USE AND EXPORT RESTRICTIONS

The Customer shall not use or export the Managed Services in a manner that is contrary to the laws of England and Wales and international export laws and regulations. These laws include restrictions on destinations, customers and end use.

15. CONFIDENTIAL INFORMATION

15.1 Each contracting party ("Receiving Party") shall keep the Confidential Information of the other party ("Supplying Party") confidential and secret.. The Receiving Party shall use the Confidential Information only for the purpose of performing the Receiving Party's obligations under this Managed Services Agreement and shall inform its officer's employees and agents of these obligations and ensure that they meet them.

15.2 The obligations above shall not apply to any information which:

15.2.1 Was known or in the possession of the Receiving Party before it was provided by the Providing Party;

15.2.2 Is, or becomes, publicly available through no fault of the Receiving party;

15.2.3 Is provided to the Receiving Party without restriction on disclosure by a third party, who did not breach any confidentiality obligations by such disclosure;

15.2.4 Was developed by the Receiving Party (or on its behalf) who had no direct access to or use of or knowledge of the Confidential Information supplied by the Supplying Party;

15.2.5 Is required to be disclosed by operation of law, including the Freedom of Information Act 2000, or by court order, the Receiving Party will consult with the Supplying Party in such circumstances.

15.3 This clause 15 shall survive termination of this Managed Services Agreement for a period of 12 months.

16. LIMITATION OF LIABILITY

16.1 Subject to clause 16.2 the following shall apply:

16.1.1 the maximum aggregate liability of the Supplier for direct loss or damages whether in tort (including, without limitation, negligence), contract or otherwise in connection with the Managed Services shall not exceed an amount equal to the Fees the Customer paid for the Managed Services for the six (6) months prior to the occurrence of the event giving rise to the claim.

16.1.2 neither of the Parties (nor any of our employees, agents, affiliates, or suppliers) shall be liable to the other for:

16.1.2.1 any indirect, special, incidental or consequential loss or damages of any kind;

16.1.2.2 any loss of profit;

16.1.2.3 any loss of business;

16.1.2.4 any loss of data;

16.1.2.5 any anticipated savings or revenue; or

16.1.2.6 any loss that could have been avoided by the damaged Party's use of reasonable diligence, even if the Party responsible for the damages has been advised or should be aware of the possibility of such damages.

16.2 Nothing in this Managed Services Agreement limits or excludes either Party's liability for any loss or damages resulting from:

16.2.1 death or personal injury caused by its negligence; and

16.2.2 any fraud or fraudulent misrepresentation.

17. INTELLECTUAL PROPERTY AND INDEMNIFICATION

17.1 Each of the Parties retain all right, title and interest in and to their respective trade secrets, inventions, copyrights, and other Intellectual Property. Any Intellectual Property developed by the Supplier during the performance of the Managed Services shall belong to the Supplier unless the Supplier has agreed with the Customer in advance and in writing that the Customer shall have an interest in the Intellectual Property.

17.2 Subject to the terms of clause 12.3 above, the Supplier grants to the Customer a non-transferrable, non-exclusive, royalty free licence to use the Application Frameworks which forms part of the Managed Services.

17.3 The Supplier shall indemnify and defend the Customer from and against any legal claim by a third party arising out of the provision of the Managed Services by the Supplier provided that the Customer:

17.3.1 gives the Supplier prompt written notice of such claim;

17.3.2 grants the Supplier control of the defence to any such claim or allegation and settlement thereof; and

- 17.3.3 gives the Supplier reasonable assistance in the conduct of the defence of such claim or allegation.
- 17.4 The indemnity set out in this clause 17 shall not apply in relation to any infringement which results from the Customer's:
- 17.4.1 alleged negligence, breach of law;
 - 17.4.2 failure to meet the security obligations required by this Managed Services Agreement;
 - 17.4.3 breach of the Customer's agreement with its own customers or end users;
 - 17.4.4 breach of Section 14;
 - 17.4.5 use of the Managed Services in combination with other equipment not supplied or recommended by the Supplier; or
 - 17.4.6 which is due to a failure by the Customer to follow the reasonable instructions of the Supplier in relation to its use of the Managed Services.
- 17.5 In any of the events of described within clause 17.4 the Customer shall be responsible for the cost of defending the claim (including the Supplier's reasonable legal fees) and any damages award, fine, or other amount that is imposed on the Supplier as a result of the claim.

18. SOFTWARE

MICROSOFT® SOFTWARE

- 18.1 In addition to the terms of the Managed Services Agreement, the Customer's use of any Microsoft® software is governed by the terms contained in the relevant Microsoft® Software Licence
- 18.2 In the event that the Supplier procures the Software Licence for the Microsoft® Software for and on behalf of the Customer then the Customer agrees to be bound by the terms and conditions of the Microsoft® Software Licence as shall be published and amended from time to time on a full back to back basis. The relevant end user licence and use rights can be found through the following links:
- [Microsoft Online Services Terms - English - January2018 – CR](#)
[Services Provider Use Rights - Worldwide - English - January2018 - CR](#)
- 18.3 The Customer shall accordingly fully indemnify the Supplier against (not by way of limitation) any and all liabilities, claims, losses and expenses that may be incurred by the Supplier to the extent that the same are a result of the Customer's failure to comply with the terms and conditions of the Microsoft® Software Licence.

THIRD PARTY SOFTWARE

- 18.4 In addition to the terms of the Managed Services Agreement, the Customer's use of any Third Party Software is governed by the terms contained in the relevant Third Party Software Licence.
- 18.5 In the event that the Supplier procures the Third Party Software Licence for the Third Party Software for and on behalf of the Customer then the Customer agrees to be bound by the terms and conditions of the Third Party Software Licence as shall be published and amended from time to time on a full back to back basis.
- 18.6 The Customer shall accordingly fully indemnify the Supplier against (not by way of limitation) any and all liabilities, claims, losses and expenses that may be incurred by the Supplier to the extent that the same are a result of the Customer's failure to comply with the terms and conditions of the Third Party Software Licence.

19. RE-SELLING OF MANAGED SERVICES

- 19.1 Subject to clauses 19.1 and 19.2 below, the Customer may resell the elements of the Managed Services, subject to written permission from the Supplier, though the Customer is responsible for the use of the Managed Services by any third party to the same extent as if the Customer was using the Managed Services itself and shall accordingly ensure that such the party is bound by terms at least equivalent to those set out within this Managed Services Agreement For the avoidance of doubt the Supplier shall have no liability whatsoever in relation to the use of the Managed Services by any of the Customer's own customers.
- 19.2 If the Customer resells any part of the Managed Services that includes Microsoft® Software, then the Customer must include the Microsoft® terms described in Section 18 (Microsoft® Software) above in a written agreement with its customers. The Supplier will provide support only to the Customer and not to the Customer's own customers, subsidiaries or affiliates.
- 19.3 For the avoidance of doubt, the Customer shall only be permitted to resell the Managed Services to the extent that the Customer has provided additional value to such Managed Services so as to render what is re-sold by the Customer as being sufficiently different to that originally supplied by the Supplier.

20. DATA PROTECTION

- 20.1 Each of the Parties agree to comply with their respective obligations under the Data Protection Act 1998 or such other legislation in force including the General Data Protection Regulation (to the extent that the same is applicable and has been enacted) ("the "Act") during the term of this Managed Services Agreement as applicable to PII that it controls or processes as part of, or in connection with, its use or provision of the Managed Services. Specifically, but without limitation, the Customer must comply with the Act as it relates to PII that the Customer stores or transfers in its use of the Managed Services.
- 20.2 The Supplier agrees that it will not provide access to PII that the Customer stores through the Managed Services to any subcontractor or affiliate outside of the EEA unless that person meets the requirements stated below during the entire time that it has access to the PII:
- 20.2.1 for PII for which the Supplier are a "controller" under the Act, the affiliate or subcontractor to whom the Supplier transfer the PII is either:
- (i) located in a country for which the European Commission has made a positive finding of adequacy, or
 - (ii) the affiliate or subcontractor is located in the United States and such transfers of PII are under the EU-US Privacy Shield as adopted by the European Commission and/or legally enforceable corporate rules that have been approved by the Information Commissioner.
- 20.2.2 for PII for which the Supplier are a "processor" under the Act, the affiliate or subcontractor that has access to the system has signed a data processing agreement with the Supplier.

21. NOTICES

- 21.1 Any notice given by either Party to the other under this Managed Services Agreement must be in writing and delivered by hand or sent by pre-paid first-class post to the address shown for each Party at the head of this Managed Services Agreement or to such other address as either Party may notify to the other from time to time. Notices sent to the Customer must be clearly addressed to the Company Secretary or Managing Director.
- 21.2 Notices delivered by hand during normal business hours will be served on the day they are delivered and otherwise on the next working day. Notices sent by first class post will be served on the second working day after the date they are posted. Notice periods and service will be determined by reference to the local date and time of the recipient of the notice.

22. IP ADDRESSES

- 22.1 Upon expiration or termination of the Managed Services Agreement, the Customer must discontinue use of the Managed Services and relinquish use of any of the IP addresses and server names assigned to the Customer by the Supplier in connection with the Managed Services, including pointing the DNS for the Customer's domain name(s) away from the Supplier Managed Services.
- 22.2 The Customer agrees that the Supplier may, as it determines necessary, make modifications to DNS records and zones on the Supplier managed or operated DNS servers and services.
- 22.3 IP Addresses used to provide the Managed Services may change without notice at any time, therefore the Customer agrees that any DNS records pointing to the Managed Service will be of CNAME type pointing to the DNS names provided by the Supplier.

23. ASSIGNMENT AND SUBCONTRACTORS

The Customer may not assign the Managed Services Agreement without the Supplier's prior written consent. The Supplier may assign the Managed Services Agreement in whole or in part as part of a corporate reorganisation or a sale of its business, and the Supplier may transfer the Customer's Confidential Information as part of any such transaction. The Supplier may use third party service providers to perform all or any part of the Managed Services, but the Supplier remains responsible to the Customer under this Managed Services Agreement for work performed by its third party service providers to the same extent as if the Supplier performed the Managed Services itself.

24. FORCE MAJEURE

Except for the payment obligations of the Customer, neither Party will be responsible or liable in any way for the failure or delay in the performance of its obligations due to Force Majeure. If a cause relied on by a Party hereunder ceases to exist, the Party will perform or resume performance of its obligations and the time for performance will be extended by a period equal to the duration of the Force Majeure. If Force Majeure persists for a period of more than 60 (sixty) days, the other Party will be entitled to terminate this Managed Services Agreement on written notice.

25. LAW AND JURISDICTION

The Managed Services Agreement is governed by English law and each of the Parties expressly and unconditionally submits to the exclusive jurisdiction of the courts in England and Wales.

26. GENERAL PROVISIONS

26.1 Variations

To be binding, any variation of this Managed Services Agreement or to any Order placed under it must be expressly accepted in writing and signed by a person authorised to sign on behalf of each Party.

26.2 Precedence

This Managed Services Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and in the event of there being any inconsistencies or contradictions as between the terms of this Managed Services Agreement and those contained within any other oral or written representations, terms and conditions contained in the Customer's Order, understandings or agreements made between the Parties then the terms of

this Managed Services Agreement shall prevail. The provisions of the Schedule(s) shall form part of this Managed Services Agreement.

26.3 Rights of Third Parties

A person who is not party to this Managed Services Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce the terms of this Managed Services Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

26.4 Severability

Every provision in this Managed Services Agreement is independent from the others to the extent that, if a provision, or any part of it, is ruled to be illegal or unenforceable by the English Courts, that provision or the relevant part of it shall be treated as having been deleted from this Managed Services Agreement, without affecting the remainder of that provision or the other provisions of this Managed Services Agreement, which shall still have full effect.

26.5 Non-Waiver

The failure of either Party in any one or more instances to insist on strict performance of one or more of the terms of this Managed Services Agreement or to exercise any right or remedy under this Managed Services Agreement or at law will not be construed as a waiver of any subsequent breach of the same term, any breach of any other term nor of the right to enforce another such right or remedy or the same right or remedy arising on another occasion.

26.6 Interpretation

All headings in this Managed Services Agreement are there for convenience, and do not have any legal effect. Use of the singular includes the plural and vice versa. The use of the word "including" in the Managed Services Agreement shall be read to mean "including without limitation." Sections and provisions that by their nature are intended to survive expiration or termination of the Managed Services Agreement shall survive expiration or termination of the Managed Services Agreement.

26.7 No Partnership

The relationship between the Parties is that of independent contractors and this Managed Services Agreement shall accordingly not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Managed Services Agreement. Neither Party is the agent for the other and neither Party has the right to bind the other to any agreement with a third party.

26.8 Counterparts and Acceptance of Terms

The Managed Services Agreement may be signed in multiple counterparts, which, taken together, will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures. Written confirmation by a duly authorised person of the acceptance of this Managed Services Agreement whether transmitted by electronic mail or otherwise may also be deemed to constitute sign-off and acceptance of the same.

26.9 Deemed Acceptance

Notwithstanding any failure on the part of the Customer to sign and execute the same, it is acknowledged and agreed that the terms and conditions of this Managed Services Agreement



shall be deemed to have been accepted by the Customer and contractually incorporated upon the commencement of the Customer's use of the Managed Services.

26.10 Employee Solicitation

The Customer shall not directly approach or attempt to entice any employee or former employee of the Supplier within the twelve (12) months following the termination of his or her employment with the Supplier without the Supplier's prior written consent.

26.11 Non-disclosure

The Customer shall not issue or make any public announcement or disclose any information regarding this Managed Services Agreement unless prior written consent has first been obtained from the Supplier.

For and on behalf of: The Supplier
Signature:
Name:
Title:
Date:

For and on behalf of: The Customer
Signature:
Name:
Title:
Date: