



Professional Services

Terms and Conditions



PROFESSIONAL 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 professional 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 professional services agreement (“the Professional Services Agreement”).

1. DEFINITIONS

“**Acceptance**” shall where applicable mean acceptance of the Professional 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 Professional 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 PS Schedule or the date upon which the Professional 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 Professional Services;

“**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;

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

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

“**Confidential Information**” means all information disclosed by one of the Parties to the other, whether before or after the effective date of the Professional 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 Professional Services Agreement or applicable law, shall not be Confidential Information of the other Party;

“**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;

“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;

“Professional Service(s)” shall mean any of the professional services to be provided by the Supplier as individually described in each Professional Services Schedule which may include the provision of configuration and bespoke coding relating to the Software;

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

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

“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 Professional Services Agreement;

“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 Professional Services Agreement;

“Order” means either: (i) the online order that the Customer submits to the Supplier via the Supplier’s website, or (ii) any other 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 Professional Services the Customer is purchasing, and that is signed by the Customer, either manually or electronically;

“Out of Scope Fees” shall mean the fees applicable to the provision services which are not included within the PS Schedule 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 PS Schedule;

“Term” shall mean the term specified within each respective PS Schedule commencing on the Commencement Date;

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

2 SCOPE OF PROFESSIONAL SERVICES

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

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

3. WARRANTIES

3.1 The Supplier warrants that:

3.1.1 the Professional Services will be of satisfactory quality;

3.1.2 the performance of the Professional 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 Professional 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 Professional 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 PS Schedule and to perform and complete the Professional Services in accordance with any agreed project timetables or milestones, subject to the Customer’s fulfilment of its obligations under the terms of this Professional Services Agreement.

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 PROFESSIONAL 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 Professional 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 Professional 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 Professional Services by the Supplier shall not be unduly prejudiced or prevented and that the provision of the Professional 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 Professional 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 Professional 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 Professional Services Agreement.

5. **UNAUTHORISED ACTIVITY**

5.1 The Supplier shall not be liable (and shall accordingly be absolved of any responsibility for the achievement of the Service Levels in the event that any faults or issues develop as a result of any of the following events (not by way of limitation):

5.1.1 a relocation or a modification of the Software or Professional Services (including but not limited to by the Customer or a third party adding to or interfacing the Software with other software) which is neither carried out nor approved by the Supplier;

5.1.2 improper use or abuse of the Software or Professional Services by any person other than the Supplier;

5.1.3 any use of the Software or Professional 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 Professional Services;

5.1.4 an event of Force Majeure;

5.1.5 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;

5.1.6 any issues which cannot be diagnosed because of a lack of available and appropriate network connectivity.

- 5.2 If a fault or issue arises as a result of any of the events described in clause 5.1 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.
- 5.3 In the event that the Customer requires to make changes which are not recommended by the Supplier to either the Professional 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 as may be defined within the PS Schedule.
- 5.4 The Customer acknowledges and agrees that for the Supplier to be able to provide the Professional Services the Customer shall:
- 5.4.1 Co-operate with the Supplier as the Supplier reasonably requires.
- 5.4.2 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.
- 5.4.3 Provide to the Supplier any relevant access to their environment whereby this access is needed to enable investigation into any given support issue.
- 5.5 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 5.4.
- 6. CLAUSE NOT IN USE**
- 7. CLAUSE NOT IN USE**
- 8. AUDIT AND SERVICE REVIEWS**
- 8.1 The Parties agree to hold a review meeting by telephone to review the delivery and performance of the Professional 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.
- 8.2 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 in advance unless otherwise specified within the PS 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 Professional 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 Professional 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 Professional 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 PS Schedule.

CREDIT BASED PAYMENTS

- 9.10 In relation to any of the Fees which are calculated on a credit structure as may be detailed within the relevant PS Schedule, "day" shall mean a period of 8 hours/credits (normal working week, Monday-Friday, 9am-5pm). Depending on the Service Levels 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 workshops 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 Professional 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 Professional Services though will

be separately chargeable if continued to be used beyond the expiry or termination of the Professional Services Agreement and/or the relevant PS 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 Professional 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 Professional Services without liability in the event that:

11.1.1 the Supplier reasonably believe that the Professional Services are being used (or have been or will be used) in breach of the Professional 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 Professional Services Agreement;

11.1.3 the Supplier reasonably believes that the Customer's Professional 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 Professional Services is necessary to protect the Supplier's network or its other customers;

11.1.5 a payment for the Professional 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 Professional 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 Professional Services during the suspension, and may charge the Customer a reasonable reinstatement fee upon reinstatement of the Professional Services.

12. TERM AND TERMINATION

- 12.1 The Professional 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 Professional 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 Professional Services Agreement all current PS Schedules shall terminate at the same time as the Professional Services Agreement.

- 12.2. The term of each PS Schedule shall be separately defined in each PS Schedule and shall accordingly continue unaffected notwithstanding the earlier termination or expiry of any other PS Schedule.
- 12.3 The Professional Services Agreement may also be terminated as follows:
- 12.3.1 if a Party becomes subject to an Insolvency Event;
- 12.3.2 if a Party is in material breach of any of its obligations under this Professional 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 Professional 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 Professional Services Agreement and/or the termination or expiry of the relevant PS 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 continued 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 Professional Services Agreement (in whole or in part) received in writing from the other Party.
- 13. CLAUSE NOT IN USE**
- 14. CLAUSE NOT IN 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 Professional 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 Professional 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 Professional Services shall not exceed an amount equal to the Fees the Customer paid for the Professional 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 Professional 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 Professional 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 9.15 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional 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:
- <http://www.igroupltd.co.uk/wp-content/uploads/Services-Provider-Use-Rights.pdf>
- <http://www.igroupltd.co.uk/wp-content/uploads/End-User-License-Agreement.pdf>
- 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 Professional 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. CLAUSE NOT IN USE

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 Professional Services Agreement as applicable to PII that it controls or processes as part of, or in connection with, its use or provision of the Professional 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 Professional Services.

20.2 The Supplier agrees that it will not provide access to PII that the Customer stores through the Professional 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 personal data 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 Professional 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 Professional 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. CLAUSE NOT IN USE

23. ASSIGNMENT AND SUBCONTRACTORS

The Customer may not assign the Professional Services Agreement without the Supplier's prior written consent. The Supplier may assign the Professional 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 Professional Services, but the Supplier remains responsible to the Customer under this Professional Services Agreement for work performed by its third party service providers to the same extent as if the Supplier performed the Professional 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 Professional Services Agreement on written notice.

25. LAW AND JURISDICTION

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

26.3 Rights of Third Parties

A person who is not party to this Professional Services Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce the terms of this Professional 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 Professional 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 Professional Services Agreement, without affecting the remainder of that provision or the other provisions of this Professional 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 Professional Services Agreement or to exercise any right or remedy under this Professional 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 Professional 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 Professional 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 Professional Services Agreement shall survive expiration or termination of the Professional Services Agreement.

26.7 No Partnership

The relationship between the Parties is that of independent contractors and this Professional 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional 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 Professional Services Agreement unless prior written consent has first been obtained from the Supplier.