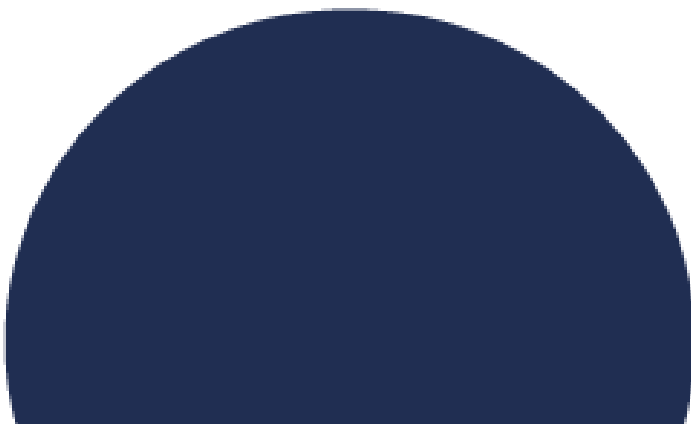




# General Terms and Conditions





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## 1. INTERPRETATION

1.1 The definitions and interpretation rules in Schedule 1 apply to these Terms and the Contract.

## 2. APPLICATION OF THE TERMS

2.1 Each Contract agreed by the parties is governed by (i) these general terms and conditions ("Terms") and (ii) the specific terms applicable to the extent the Contract makes reference to the sale of such Goods and/or Services as further detailed in Schedules 2 - 6 ("Specific Terms").

2.2 These Terms shall prevail over any inconsistent terms or conditions contained in, or referred to, in the Customer's purchase order, or other Customer's documentation, or implied by law, trade custom, practice or course of dealing.

2.3 For the avoidance of doubt the Supplier Sales and Marketing Documents are not incorporated into and do not form part of the Contract.

## 3. CONTRACT FORMATION AND STRUCTURE

3.1 Each Contract shall be agreed in the following manner:

3.1.1 The Customer shall ask the Supplier to provide any or all of the Goods and Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare the Quotation for the requested Goods and/or Services;

3.1.2 Following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:

- (a) inform the Customer that it declines to provide the requested Goods and/or Services; or
- (b) provide the Customer with a Quotation listing the requested Goods and/or Services and the applicable Charges; and
- (c) Both parties shall sign the Quotation when it is agreed.

3.1.3 Each Quotation shall constitute a separate Contract between the parties.

3.2 In the event the Customer purchases any Professional Services, the Supplier shall prepare a draft Statement of Work and the Customer shall promptly review and provide comments. The Supplier will then prepare the final version of the SOW, taking into account any comments from the Customer, and the parties shall sign the SOW when agreed. The SOW shall form part of the Contract.

3.3 In the event the Customer purchases any Managed Services, the applicable Service Definition Document referenced in the Quotation shall apply to and form part of the Contract.

3.4 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on either party unless in writing and signed by authorised representatives of both parties.

3.5 The Contract shall not prevent either Party from entering into similar agreements with third parties, and the Supplier from independently developing, using, selling or licensing materials, products or services that are similar to those provided under the Contract.



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## 4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier undertakes that the Services will be performed with all reasonable skill and care and in accordance with Good Industry Practice and the Terms and that the Services will be provided substantially in accordance with the Contract.
- 4.2 If the Services do not conform with the undertaking in Clause 4.1, the Supplier shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.
- 4.3 The Supplier shall use reasonable endeavours to meet any delivery/performance dates but any such dates shall be estimates only and time for delivery/performance by the Supplier shall not be of the essence of the Contract.
- 4.4 The Supplier shall observe all reasonable health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it within a reasonable time prior to the commencement of the Services, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 4.5 The Supplier shall remain throughout the term of the Contract compliant (and certified by an independent, reputable and competent certification body to be compliant) with a then-current version of International Standards Organisation (ISO) 27001, ISO 9001, ISO 14001, ISO 20000.
- 4.6 The Supplier's personnel and sub-contractors (if any) used by the Supplier in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform.
- 4.7 In performing its obligations under the Contract, the Supplier shall comply with all applicable laws.

## 5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:
  - 5.1.1 Co-operate with the Supplier in all matters relating to the Contract;
  - 5.1.2 Provide to the Supplier, in a timely manner all necessary access (whether physical or remote as solely determined by the Supplier) to Customer's premises, data and other facilities as reasonably required by the Supplier including any such access as is specified in the Contract;
  - 5.1.3 Provide to the Supplier in a timely manner all documents, information, items and materials in any form required under the Contract or otherwise reasonably required by the Supplier in connection with the Contract and ensure that they are accurate and complete;
  - 5.1.4 Provide such personnel assistance as may be reasonably requested by the Supplier from time to time;
  - 5.1.5 Allow the Supplier or its designated subcontractors, Admin on Behalf of (AOBO) or admin access (at either owner or contributor level (as applicable)) or such other access as the



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Supplier requires to the Customer's relevant servers and networking systems for the duration of the Contract;

- 5.1.6 Where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite, Power Platform, Office 365 or Dynamics 365), the Supplier will be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR) and Digital Partner of Record (DPOR) and/or Partner Admin Link (PAL) and/or Transacting Partner of Record (TPOR) and/or Admin on Behalf of (AOBO) for the duration of the Contract unless otherwise agreed between the Parties. The Customer acknowledges that the Charges may reflect a concession that is contingent upon the Supplier being designated in accordance with this Clause. If in breach of this Clause, the Customer fails to designate the Supplier, where the Supplier has applied such a concession, the Supplier shall be entitled to charge the Customer an additional amount to reflect the applicable reduction;
  - 5.1.7 In respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that the Customer does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Customer the amounts directly and the Customer shall follow the payment terms in the Contract; In respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that the Customer does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Customer the amounts directly and the Customer shall follow the payment terms in the Contract;
  - 5.1.8 Where Azure Lighthouse is deployed, ensure the Supplier has the required access for the duration of the Contract;
  - 5.1.9 Comply with all applicable laws and regulations with respect to its activities under the Contract;
  - 5.1.10 In respect of any Microsoft funded services, sign and deliver the Proof of Execution (**POE**) on the last day of scheduled work;
  - 5.1.11 Maintain continuous global admin access to the Customer's relevant cloud services portals for the duration of the Contract; and
  - 5.1.12 Carry out all other Customer responsibilities set out in the applicable Contract or the Specific Terms in a timely and efficient manner.
- 5.2 Subject to clause 18.2 and notwithstanding any other provision of the Contract, the Supplier shall have no liability or responsibility for failure to perform the Services or its other obligations in accordance with the Contract including any Service Levels if it is prevented, hindered or delayed in doing so as a result of the Customer's (including without limitation any of its employees, subcontractors or any of its staff) breach of its obligations under the Contract.

## 6. CHANGE CONTROL

- 6.1 The Customer Representative and the Supplier Representative shall have such meetings as are agreed between the Parties to monitor and review the performance of the Contract and to discuss any changes proposed in accordance with this clause 6.
- 6.2 Before each meeting, the Client Representative shall notify the Supplier Representative, and vice versa, of any problems relating to the provision of the Services for discussion at the meeting. At



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each such meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next meeting.

- 6.3 If either party submits a Change Request, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 6.3.1 the likely time required to implement the change;
  - 6.3.2 any variations to the Supplier's charges arising from the change;
  - 6.3.3 the likely effect of the change on the Services; and
  - 6.3.4 any other impact of the change on the terms of the Contract.
- 6.4 If the Supplier submits a Change Request, the Customer shall not unreasonably withhold or delay consent to it.
- 6.5 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Services and any other relevant terms of the Contract to take account of the change.

## **7. CHARGING AND INVOICING**

- 7.1 Unless otherwise agreed in the Contract, reasonable out-of-pocket expenses may be charged by the Supplier on production of reasonable evidence of expenditure to the Customer.
- 7.2 All Charges are-exclusive of VAT, which shall be invoiced to and paid by the Customer at the rate and in a manner for the time being prescribed by law.
- 7.3 Unless otherwise agreed in the Contract and subject to Customer's satisfactory credit check, payment is due 30 days from the invoice date (without any deduction or right of set off whatsoever).
- 7.4 The Supplier reserves the right to change the payment terms and/or invoicing terms, should Customer's credit adversely change or the Customer persistently fails to fulfil its payment obligation within the agreed payment terms.
- 7.5 No payment shall be considered made until the Supplier receives such payment in cleared funds from the Customer.
- 7.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under the Contract on the due date:



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- 7.6.1 The Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 2% per month; and
- 7.6.2 The Supplier may suspend part or all of the Services or further delivery of the Goods until payment is made in full. For the avoidance of doubt, in the case of the Managed Services, the Charges shall continue to accrue during the suspension.
- 7.7 In the event that the Customer uses a finance company to purchase the Goods and/or Services from the Supplier, and such finance company fails to pay the Supplier for the Goods, then the Customer shall be liable to pay the Supplier (on behalf of the finance company) in full for any outstanding Charges.

## 8. DISPUTES

- 8.1 The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:
- 8.2 The dispute shall be referred, by either party, first to the Customer or Supplier Representative (as applicable) for resolution;
- 8.3 If the dispute cannot be resolved within fourteen (14) days after the dispute has been referred to the manager then either party may give notice to the other party in writing ("Dispute Notice") that a dispute has arisen and could not be resolved by the managers; and
- 8.4 Within seven (7) Working Days of the date of the Dispute Notice, each Party shall refer the dispute to a company director for resolution.
- 8.5 If the company directors are unable, or fail, to resolve the dispute within 21 Working Days of the date of the Dispute Notice, or within 14 Working Days of the reference to the company directors pursuant to this clause 8 the parties may attempt to resolve the dispute by mediation.
- 8.6 If within 30 days of the Dispute Notice the parties have failed to agree on a resolution, either party may refer any dispute for mediation pursuant to this clause 8 but neither shall be a condition precedent to the commencement of any court proceedings, and either party may issue and commence court proceedings prior to or contemporaneously with the commencement of mediation. The following provisions shall apply to any such reference to mediation:
- 8.6.1 The reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
- 8.6.2 Both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including



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an agreement in, or substantially in, the form of CEDR Model Mediation Agreement for time being in force; and

8.6.3 To the extent not provided for by such agreement of the MMP:

- (a) The mediation shall commence by either Party serving on the other written notice setting out, in summary form the issues in dispute and calling on that other Party to agree the appointment of a mediator; and
- (b) The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.

8.7 If and to the extent that the Parties do not resolve any dispute or any issue in the course of any mediation, either party may commence or continue court proceedings in respect of such unresolved dispute.

8.8 Nothing in this clause 8 shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 The Supplier shall grant a non-exclusive and royalty-free license to the Customer for any Modifications the Supplier makes or other Intellectual Property the Supplier develops during the Term and in connection with the Contract.

9.2 Subject to clauses 9.3, 9.5 and 9.6, if the Contract explicitly states that the Supplier shall create bespoke source code or any part of it, for the Customer then, any Intellectual Property Rights in such bespoke source code or part of it (as applicable) (the "Relevant IPR") will, subject to the Supplier receiving payment in full and cleared funds, vest in and be owned by the Customer. Such Relevant IPR shall be clearly registered on an asset register for the Customer and separated from any Supplier's IPR.

9.3 The Supplier:

9.3.1 hereby assigns to Customer as at the date of creation all of its rights, title and interest (including all intellectual property rights) in all Relevant IPR without further consideration and such assignment will also be an assignment (in respect of any copyright existing



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therein) of future copyright pursuant to section 91 of the Copyright, Designs and Patents Act 1988 or equivalent provision in any relevant jurisdiction;

- 9.3.2 must obtain from any relevant members of the Supplier group, any contractor, agent or sub-contractor of Supplier, or any other third party (each, a "Relevant Person"), any assignments in relation to the Relevant IPR as are necessary to give effect to this Clause 9.3;
  - 9.3.3 must do all acts and things as may be reasonably necessary, and execute all necessary documents relating to such matters, to vest the ownership of the Relevant IPR in the Customer;
  - 9.3.4 must procure that each Relevant Person must do all acts and things as may be necessary, and execute all necessary documents, to vest the ownership of the Relevant IPR in the Customer; and
  - 9.3.5 must procure that each Relevant Person (and any relevant members of the Supplier's personnel) waive any moral rights (as conferred by Chapter IV of the Copyright, Designs and Patents Act 1988 or equivalent provision in any relevant jurisdiction) relating to the Relevant IPR.
- 9.4 The transfer of ownership in clause 9.1 will not apply to any Intellectual Property Rights in any materials that were created by or on behalf of the Supplier prior to the Commencement Date (the "Supplier's Background IPR"), all of which will remain the property of the Supplier.
- 9.5 To the extent that any Deliverable incorporates any Supplier's Background IPR, the Supplier hereby grants the Customer a non-exclusive, perpetual, irrevocable, worldwide, royalty-free licence to use the Supplier's Background IPR for any purpose. For the avoidance of doubt, the Customer must not use the relevant Supplier's Background IPR independently or separately from the Deliverable in which such Supplier's Background IPR is incorporated (and the licence granted in this clause 9.5 must not apply to any such independent or separate use).
- 9.6 Where the Deliverables incorporates any Open Source Software, such Open Source Software shall be licensed according to the terms and conditions of the specific licence under which the relevant Open Source Software is distributed, but is provided "as is" and without limitation, the Supplier specifically denies any implied or express representation that such Open Source Software in conjunction with or as incorporated or linked with the Deliverables will be fit:
- 9.6.1 To operate in conjunction with any hardware items or software products other than with those that are identified as being compatible with the Deliverables; or
  - 9.6.2 To operate uninterrupted or error-free.
- 9.7 Where the Supplier incorporates any Third Party Software in the provision of the Services or in the Deliverables, such Third Party Software shall be licensed subject to the relevant third party licensing terms and the Customer acknowledges that the only warranties in relation to the Third Party Software, or the supply thereof, are those contained in the standard licence terms from the third party vendor of the same, and that to the extent that any of such warranties are given to the Supplier, it will pass on the benefit of such warranties to the Customer. The Customer agrees to be bound to the relevant third parties by such licence terms and to use reasonable endeavours to ensure that its Affiliates are bound under similar obligations owed to the relevant third party. Third Party Software is provided "as is" and without limitation, the Supplier specifically denies any implied or express representation that such Third Party Software in conjunction with or as incorporated or linked with the Services or the Deliverables will be fit:



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9.7.1 To operate in conjunction with any hardware items or software products other than with those that are identified as being compatible with the Deliverables; or

9.7.2 To operate uninterrupted or error-free.

9.8 The Supplier:

9.8.1 Warrants that the receipt and use of the Services and Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights of any third party;

9.8.2 Shall not be in breach of the warranty in clause 9.3.1, and the Customer shall have no claim under the indemnity at clause 10.1 to the extent the infringement arises from:

- (a) Any modification of the Services or any Deliverable, other than by or on behalf of the Supplier; and
- (b) Compliance with the Customer's specifications or instructions.

9.9 Neither party shall have any right to use any of the other party's names, logos or trademarks on any of its products or services without the other party's prior written consent.

## 10. INTELLECTUAL PROPERTY INDEMNITY

10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including court costs and reasonable legal fees) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Deliverables, or receipt of the benefit of the Services, provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity ("Claim"), the Customer:

10.1.1 As soon as reasonably practicable, gives written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

10.1.2 Does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

10.1.3 Gives the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

10.1.4 Subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.



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- 10.2 Without prejudice to clause 10.1, the Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:
- 10.2.1 Caused or contributed to by the Customer's use of the Deliverables or the Services (as the case may be) in combination with software not supplied or approved in writing by the Supplier (other than the operating system of any computer hardware, provided that the Supplier was notified in writing of the identity of this operating system before this agreement was entered into);
  - 10.2.2 Based on use of any version of the software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version; or
  - 10.2.3 Where the claim for infringement arises in respect of a feature of the software which was specified by the Customer in the specification.
- 10.3 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Supplier Background IPR in breach of the Contract, provided that:
- 10.3.1 The Customer is given prompt notice of any such claim;
  - 10.3.2 The Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 10.3.3 The Customer is given sole authority to defend or settle the claim.
- 10.4 If a Claim is brought or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense ensure that the Customer is still able to use the Deliverable(s) by either:
- 10.4.1 modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that these Terms shall apply in the same way and to the same extent to such modified or substituted services; or
  - 10.4.2 procuring a licence or permission to use the Deliverables on terms which are acceptable to the Client, such acceptance not to be unreasonably withheld.

## 11. PERSONNEL

- 11.1 Each Party appoints the persons named as such in the Contract as the 'Customer Representative' and the 'Supplier Representative' respectively. The Representatives shall have the authority to act on behalf of its respective Party on the matters set out in, or in connection with, these Terms. Either Party may, by further written notice to the other Party, revoke or amend the authority of its Representative or appoint a new Representative.
- 11.2 The respective Representatives shall be sufficiently senior within the organisation (director level or above) of the appointing Party, and granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of these Terms.
- 11.3 The Parties agree that any transfer of a contract of employment to the Supplier by reason of the Parties entering into a Contract shall only occur by operation of and in accordance with TUPE.



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- 11.4 Without prejudice to any other term of these Terms, in the event that it is deemed that an employee of the Customer has their contract of employment transferred from the Customer to the Supplier following the commencement of the Contract, the Customer shall be responsible for all Employment Costs in respect of the Transferring Employees up to and including the Relevant Transfer Date and shall indemnify and keep indemnified the Supplier against such Employment Costs.
- 11.5 Without prejudice to any other term of these Terms, in the event that it is deemed that an employee of the Supplier has their contract of employment transferred from the Supplier to the Customer following termination or expiry of the Contract, the Supplier shall be responsible for all Employment Costs in respect of the Transferring Employees and the Supplier shall indemnify and keep indemnified the Customer (and any replacement supplier) against Employment Liabilities arising as a result of the transfer of the Services.
- 11.6 The relevant Party shall provide to the other Party the Employee Liability Information for the Transferring Employees together with such other information in relation to the Transferring Employees as the other Party may require and the Party providing the information shall ensure that such information is kept up to date up to and including the Relevant Transfer Date.
- 11.7 The relevant Party warrants that in the 6 month period prior to the Relevant Transfer Date (save as disclosed) no changes have been made to the identity of the personnel involved in carrying out the activities which are essentially the same as the Services (or parts of them) and further that no changes have been made to the terms and conditions of employment of any Transferring Employee.
- 11.8 The relevant Party shall indemnify and keep indemnified the other Party against any Employment Liabilities incurred by the other Party arising out of or in connection with:
- 11.8.1 The employment of any Transferring Employee prior to the Relevant Transfer Date;
- 11.8.2 The termination of employment of any employee of the relevant Party (or of any of its subcontractors) before, on, or after the Relevant Transfer Date.

## 12. NON-SOLICITATION

- 12.1 The Customer shall not during the Initial Term and/or the Term and/or any Renewal thereafter and for 12 months following the termination or expiry of the Contract either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) or employ or attempt to employ any person from the employment of the Supplier in the provision of the Goods and/or Services, whether an employee or sub-contractor of the Supplier.
- 12.2 If the Customer commits any breach of clause 12.1, the Customer shall, pay to the Supplier a sum equal to 12 months' salary of the Suppliers employee or sub-contractor and any recruitment costs incurred by the Supplier in replacing such person.

## 13. CUSTOMER DATA

- 13.1 The Parties shall comply with the data protection provisions set out in Schedule 7 to these Terms.



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## 14. CONFIDENTIALITY

- 14.1 Each party undertakes that it shall not at any time during the term of the Contract, and for a period of five years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.214.2.1:
- 14.2 Each party may disclose the other party's Confidential Information:
- 14.2.1 To its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- 14.2.2 As may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 14.4 Clause 14.1 shall not apply to the extent that:
- 14.4.1 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 14.4.2 such information was obtained from a third party without obligation of confidentiality;
- 14.4.3 such information was already in the public domain at the time of disclosure otherwise than by a breach of these Terms;
- 14.4.4 it is independently developed without access to the other party's confidential information.

## 15. ANTI-BRIBERY

- 15.1 The Supplier shall:



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- 15.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (Relevant Requirements);
  - 15.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 15.1.3 have and maintain in place throughout the term of any Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and shall enforce them where appropriate;
  - 15.1.4 promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract; and
  - 15.1.5 immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier and/or acquires a direct or indirect interest in the Supplier (and the Supplier warrants and represents that it has no foreign public officials as officers or employees AND/OR direct or indirect owners at the date of the Contract).
- 15.2 The Supplier shall ensure that any person associated with the Supplier or who is otherwise performing services in connection with the Contract does so only on the basis of a written contract that imposes on and secures from such person terms equivalent to those imposed on the Supplier in these Terms (Relevant Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 15.3 For the purpose of this Clause 15, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act, and section 8 of that Act respectively. For the purposes of this clause 15 a person associated with the Supplier also includes any sub-contractor of the Supplier.



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## 16. MODERN SLAVERY

- 16.1 In performing its obligations under the agreement, the Supplier shall:
- 16.1.1 Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
  - 16.1.2 Have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance;
  - 16.1.3 Not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
  - 16.1.4 Require that each of its direct subcontractors and suppliers shall comply with the Anti-slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015.
- 16.2 The Supplier represents and warrants that neither the Supplier nor any of its officers, employees:
- 16.2.1 Has been convicted of any offence involving slavery and human trafficking; and
  - 16.2.2 To the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 16.3 The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-Slavery policy available to the Customer upon request.

## 17. FORCE MAJEURE

- 17.1 Subject to the remaining provisions of this clause 17.17, either Party to the Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event ("the Affected Party").
- 17.2 In the event that either Party is delayed or prevented from performing its obligations under the Contract by a Force Majeure Event, such party shall:
- 17.2.1 Give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof its estimated duration;
  - 17.2.2 Use reasonable endeavours to mitigate the effects of such delay or prevention of the performance of its obligations under the Contract; and
  - 17.2.3 Resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 17.3 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Contract.



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17.4 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract. Following such notification, these Terms shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event, unless agreed otherwise by the Parties.

## 18. LIMITATIONS ON LIABILITY

18.1 References in this clause 18 to liability include every kind of liability arising under or in connection with the Terms and the Contract including liability in contract, tort (including negligence), misinterpretation, restitution or otherwise.

18.2 Nothing in these Terms excludes or limits any liability which cannot legally be limited, including liability for:

18.2.1 Death or personal injury caused by its negligence;

18.2.2 Fraud or fraudulent misrepresentation; and

18.2.3 Any other liability which cannot lawfully be excluded or limited.

18.3 Subject to clause 18.2:

18.3.1 Neither party shall in any circumstances be liable whether in tort (including for negligence or breach of statutory duty, however arising), contract, misrepresentation (whether innocent or negligent), or otherwise for; any loss of profits, loss of business, depletion of goodwill or similar losses, loss of anticipated savings, loss of Contract, loss of use, loss or corruption of data or information or any pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising; and this limitation applies even if the loss was foreseeable or in the contemplation of either party;

18.3.2 The Parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty, however arising), misrepresentation (whether innocent or negligent) restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or otherwise arising in favour of the Customer shall be limited to a sum equal to 125% of value of the Charges paid or payable during the twelve (12) months preceding the date on which the claim arose Initial Term (excluding, in the case of the Customer, the Customer's obligation to pay the Charges pursuant to the Contract);

18.3.3 Each Party's total aggregate liability to the other Party in respect of all losses suffered in connection with any breaches of clause 10.1 (IPR Indemnity) (in the case of the Supplier) or Clause 10.3 (in the case of the Customer) and Schedule 7 (Data Protection) will not exceed £2,500,000 (two million and five hundred).

18.4 The Supplier has given commitments as to compliance of the Services with relevant specification. In view of these commitments, the terms implied by sections 3,4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

18.5 The warranties set out in these Terms (including the Specific Terms) are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to these Terms and/or the Contract. Without limitation, the Supplier specifically denies any implied or express representation that the Goods and/or Services (including Customer Operating Environment):



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- 18.5.1 Operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified by the Supplier as being compatible with the System; or
- 18.5.2 Customer's use of the Goods and/or Services will be uninterrupted or error-free. Or warrant that the Goods and/or Services will operate without interruption or error.

## 19. TERMINATION AND SUSPENSION

- 19.1 Without prejudice to any other rights or remedies to which the Supplier is entitled, the Supplier shall be entitled to terminate the Contract in part or in full and/or suspend any of the Services or delivery of Goods forthwith by notice in writing in the following circumstances:
  - 19.1.1 If the Customer fails to pay an undisputed sum due to the Supplier within 30 days from the notification sent by the Supplier informing of the outstanding amounts;
  - 19.1.2 If the Customer commits any material breach of these Terms incapable of remedy or which if the same be capable of remedy it fails to remedy within 14 days of the Supplier's written notice;
- 19.2 For the avoidance of doubt, the Charges shall continue to accrue during the period of suspension and the Customer shall remain liable for such Charges.
- 19.3 Notwithstanding any termination or suspension the Customer shall pay to the Supplier all Charges which fell due for payment prior to termination or suspension (including the Charges for the period whilst the Services were suspended) in full without refund including sums for Services already provided to the date of such termination or suspension.
- 19.4 Either party may terminate the Contract by giving written notice to the other party if any of the following events occurs:



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- 19.4.1 A winding-up order or bankruptcy order is made against the other party; or
  - 19.4.2 The other party passes a resolution or makes a determination for it to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or
  - 19.4.3 The other party has appointed to it an administrator or an administrative receiver; or being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or
  - 19.4.4 Being a partnership in addition to the above, suffers bankruptcy orders being made against all of its partners.
  - 19.4.5 An incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the other party's assets;
  - 19.4.6 The other party ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 19.4.7 Any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into; or
  - 19.4.8 The other party ceases, or threatens to cease, to carry on business; or
  - 19.4.9 Any event analogous to those described in clause 19.4.1 to clause 19.4.8 occurs in relation to the other party in any jurisdiction in which that other party is incorporated, resident or carries on business.
- 19.5 Clause 19.4 shall not apply in circumstances where the insolvent business is sold as a going concern within 30 days from an appointment of an administrator (i.e. in circumstances where the insolvent business is sold as a pre-pack in administration).
- 19.6 If the Supplier commits a material breach of the Services and the breach is capable of remedy, the Customer may not terminate the Services in whole or in part without first operating the Remedial Plan Process. The Remedial Plan Process is as follows:
- 19.6.1 The Customer notifies the Supplier that it considers that the Supplier is in material breach and that it requires a Remedial Plan. The notice may specify the matters complained of it outline but must contain sufficient details so that it is reasonably clear what the Supplier has to remedy;
  - 19.6.2 The Supplier shall serve on the Customer a draft Remedial Plan within 10 Working Days (or any other period agreed by the Parties);
  - 19.6.3 If a Remedial Plan is agreed between the Parties but the Supplier fails to implement the Remedial Plan within the time period agreed in the Remedial Plan or otherwise fails to remedy the material breach the Customer may, without limiting its other rights or remedies terminate the Service by written notice.
- 19.7 The Customer shall have a right to terminate a Contract without a cause provided that it serves on the Supplier a 30 days written notice and such termination is subject to the Customer paying all the Charges remaining to be paid under the Contract until the end of the contracted Term.



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- 19.8 Termination of the Contract, howsoever arising, shall not affect or prejudice the accrued rights of the Parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 19.9 The provisions of clauses 12 (Non-Solicitation), 9 (Intellectual Property Rights), 13 (Customer Data), 14 (Confidentiality), 18 (Limitations on Liability), 24 (Severance), 26 (Entire Agreement), 27 (Third Party Rights) and 30 (Governing Law and Jurisdiction), shall survive the termination or expiry of the Contract.

## **20. EXIT**

- 20.1 In the event of the termination or expiry of the Contract for any reason the Supplier shall provide Exit Assistance Services to the Customer in accordance with the requirements of the Exit Plan jointly agreed between the parties. If the Parties are unable to agree the contents of the Exit Plan, either Party may refer the Dispute for resolution in accordance with the Dispute Resolution Procedure.
- 20.2 The Customer shall pay the Exit Assistance Service Charges in respect of the provisions of the Exit Assistance Service.
- 20.3 For the avoidance of doubt, the Contract shall be active until the completion of the Exit Assistance Services.

## **21. ASSIGNMENT**

- 21.1 The Supplier may at any time assign, novate, transfer, charge, subcontract or deal in any other manner, or otherwise dispose of or create any trust in relation to all or any of its rights or obligations under these Terms without the consent of the Customer.
- 21.2 The Customer shall not, without the consent of the Supplier, assign, novate, transfer, charge, subcontract or deal in any other manner, or otherwise dispose of or create any trust in relation to all or any of its rights or obligations under the Contract.

## **22. WAIVER AND CUMULATIVE REMEDIES**

- 22.1 Unless a right or remedy of either Party is expressed to be an exclusive right or remedy, the exercise of it by that Party is without prejudice to that Party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 22.2 The rights and remedies provided by the Contract are cumulative and, unless otherwise provided in these Terms, are not exclusive of any right or remedies provided at law or in equity or otherwise under the Contract.

## **23. RELATIONSHIP OF THE PARTIES**

- 23.1 Nothing in these Terms is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.



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## 24. SEVERANCE

24.1 If any provision of these Terms is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of these Terms that is fundamental to the accomplishment of the purpose of the Contract is held to any extent to be invalid, the Supplier and the Customer shall immediately commence good faith negotiations to remedy that invalidity.

## 25. FURTHER ASSURANCES

25.1 Each Party undertakes at the request of the other, and at the cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

## 26. ENTIRE AGREEMENT

26.1 These Terms, together with the Contract, constitute the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

26.2 Each of the parties acknowledges and agrees that in entering into the Contract does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in these Terms. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of Contract under the terms of these Terms.

## 27. THIRD PARTY RIGHTS

27.1 These Terms are not intended to and do not give any person who is not a Party to these Terms any rights to enforce any provisions contained in these Terms (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 28. NOTICES

28.1 Any notices given under or in relation to these Terms shall be in writing, signed by or on behalf of the party giving it and shall be served by delivering it personally or by sending it by, recorded delivery, or by email, to the address or email address and for the attention of the relevant party notified for such purpose or to such other address as that party may have stipulated in accordance with this clause 28.

28.2 Notice shall be deemed to have been received:

28.2.1 If delivered personally, at the time of delivery;

28.2.2 In the case of recorded delivery, two Working Days from the date of posting; and

28.2.3 In the case of email at the time of despatch.

28.3 To prove service it is sufficient to prove that:



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- 28.3.1 If sent by recorded delivery post, the envelope containing the notice was properly addressed and posted; or
- 28.3.2 If sent by e-mail, that the notice was sent (in plain text) to the e-mail address of the Party (using delivery receipt), the highest importance level option for delivery and marking the subject header of the e-mail "Important Legal Notice".

## 29. ORDER OF PRECEDENCE

- 29.1 If there is any conflict between the clauses of these Terms, between the Schedules and/or the Contract the following order of precedence shall apply:
  - 29.1.1 Quotation;
  - 29.1.2 The clauses of the Cloud Agreement as contained in Schedule 6 (if applicable) to the extent applicable to the Cloud Resource Subscription;
  - 29.1.3 The Specific Terms in respect of the Services listed in the Quotation;
  - 29.1.4 These Terms;
  - 29.1.5 The SDD/SOW (as applicable to the Service purchased);
  - 29.1.6 Remaining Schedules.

## 30. GOVERNING LAW AND JURISDICTION

- 30.1 The Contract shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.



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## 31. SCHEDULE 1 - DEFINITIONS

1. In this Agreement, the following terms shall have the following meanings:

“Acceptance Test”	means the tests carried out by the Supplier and Customer to ascertain whether the Acceptance Tests Criteria have been met;
“Acceptance Test Certificate”	means a certificate issued by the Supplier to the Customer confirming successful execution of Acceptance Test Criteria, accepted by the Customer in accordance with Schedule 2, clause 0;
“Acceptance Test Criteria”	means the criteria mutually agreed between the Parties against which the Supplier shall perform Acceptance Test;
“Additional Service”	means any Service outside the scope of a Contract or which occurs pursuant to Schedule 3, clauses 1.3 and 1.37;
“Additional Service Charge”	means fees payable by the Customer for the Additional Service;
“Affected Party”	means the Party seeking to claim relief in respect of a Force Majeure Event;
“Background IPR”	means any and all IPRs that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Effective Date or otherwise);
“Base Charge”	means the minimum fee the Customer will pay for the Managed Service, as indicated on the Quotation;
“Base Commit”	means the level of cloud-based product consumption/usage the Customer can consume within scope of the Managed Service (whether such consumption/usage is payable to the Supplier or the cloud provider directly);
“Change Request”	A request for a change in the Service;
“Charges”	means the fees payable by the Customer for the Goods/Services as set out in a Quotation;
“Claim”	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided by the Supplier (or to which the Supplier has provided access) to the Customer in the fulfilment of its obligations;
“Cloud Agreement”	means the agreement from the applicable third party cloud provider as referenced in Schedule 3, clause 1.36;
“Cloud Resource Subscription”	means a subscription for cloud based products with a third party cloud provider as shown in Schedule 3, clause 1.32;
“Commencement Date”	means the date of the commencement of the relevant Service. For a Managed Service on hardware shall be the date the Goods (or part of them) are shipped (in such instances the date will be confirmed on delivery note) or the date the first virtual resource(s) are provisioned for Customer’s use.

For Managed Service – Microsoft Cloud (Azure, Enterprise Mobility Suite, Power Platform, Office 365 or Dynamics 365) or AWS (as applicable), it shall



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be the date at the earlier of a) from the commencement of the Professional Service; or b) on commencement of the third party Cloud Public Resource Subscription; or c) such date as is notified by the Supplier.

For WAN the Commencement Date shall be the date the circuits are installed as notified by the circuits provider;

“Confidential Information”	means all written, visual, or oral information of whatever kind or nature (including any copies thereof) furnished by the Disclosing Party, irrespective of the form of communication, and whether the information is furnished before, on or after the date hereof, and all analyses, compilations, forecasts, data, abstracts, summaries, studies, notes, translations, memoranda, or other documents or materials, prepared by the Recipient containing or based on, or generated or derived from, in whole or in part, any such furnished information;
“Confirmed Service Date”	means the date for delivery of the Professional Services agreed by the Parties at a project initiation meeting;
“Consultancy Credit”	means pre-paid consultancy days/hours;
“Contract”	any contract between the Customer and the Supplier for the provisions of Goods and/or Services, entered into pursuant to the Terms, which consists of a Quotation, SOW and SDD
“Customer”	means the person, firm or company detailed in the Quotation as the party procuring the Goods/Services from the Supplier;
“Customer Operating Environment”	means the Customer’s computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Service and which interfaces with the Supplier’s System in order for the Customer to receive the Services
“Customer Representative”	means an individual representing the Customer appointed in accordance with clause 11.1 of these Terms;
“Data”	means data in its electronic form, stored and processed by a computer, including but not limited to individual files, folders, databases and virtual machines;
“Deliverables”	means, except as otherwise provided herein the Terms, any and all documents, information, data, Goods and Services as detailed in the applicable Contract;
“Disclosing Party”	means the Party disclosing Confidential Information to the Recipient;
“Dispute”	means any dispute, difference or question of interpretation arising out of or in connection with these Terms and/or the Contract, including any dispute, difference or question of interpretation relating to the Services, any matter where these Terms directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	has the meaning given in clause 8.3 of the Terms;



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“Dispute Resolution Procedure”	means the dispute resolution procedure set out in clause 8 of the Terms;
“Effective Date”	means the date a Contract comes into force and is binding upon both Parties which shall be the earliest of: the date the Quotation is signed by the Customer or the Supplier commences the provision of the Goods and/or Services;
“Emergency Maintenance”	means any maintenance where repair is needed urgently;
“Employment Costs”	means all costs, expenses, charges and contributions arising or accrued in connection with the contract of employment or its termination including, without limitation, all remuneration, emoluments, salaries, wages, bonus, commission, benefit costs, holiday pay, notice pay, redundancy pay, taxation and national insurance contributions and contributions to retirement benefit schemes;
“Employment Liabilities”	means all claims and liabilities whatsoever and whether arising in tort, contract, statute or otherwise including without limitation demands, actions, proceedings, awards, compensation, damages, fines, orders, recommendations, penalties, disbursements, payments made by way of settlement and costs and expenses incurred in connection implementing any requirements which may arise from the same together with any professional and/or legal costs and expenses including VAT;
“Equipment”	means any hardware or software which the Supplier rents out to the Customer or which is owned by the Supplier and provided to the Customer for the provision of the Services;
“Exit Assistance Service”	means services provided by the Supplier to the Customer in the event of the expiry or termination of Managed Service (for any reason whatsoever) to facilitate the transfer of the Services to the Customer or a replacement supplier;
“Exit Assistant Service Charge”	means fees payable by the Customer for Exit Assistance Service;
“Exit Plan”	means the plan for the provisions of the Exit Assistance Services, which is to be developed by the parties pursuant to clause 20;
“Flex Charge”	means the rate payable by the Customer in addition to the Base Charge(s), as stipulated in the Quotation;
“Force Majeure Event”	means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including but not limited to; strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, interruption, shortage or regional or national failure of power supplies or disruption to networks, difficulty, delay or failure in manufacture, production or supply by third parties of any Goods or Services (to the extent that such difficulty, delay or failure was caused by a Force Majeure Event affecting that party), act of God, pandemic or epidemic, war, riot, civil commotion, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or



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	machinery, fire, flood, storm, earthquake, Force Majeure Event of the Supplier's third party vendors and subcontractors, and any act or omission of Microsoft, Google and AWS that cannot be mitigated by the Supplier;
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
"Goods"	means any apparatus goods (not being the Equipment) purchased by the Customer;
"Incident"	means an unplanned interruption to the Customer Operating Environment;
"Initial Term"	means the agreed duration of the Managed Service;
"Intellectual Property Rights" or "IPR"	(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;  (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction
"Managed Service"	means the support and maintenance services as described in the Service Definition Document;
"Milestone"	means a stage of Professional Service as agreed in the project plan;
"Modifications"	means any modifications performed by the Supplier to a standard software programs proprietary to the Supplier and/or third parties listed in the Contract;
"Open Source Software"	means any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition ( <a href="http://www.opensource.org/docs/definition.php">http://www.opensource.org/docs/definition.php</a> ) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <a href="http://www.gnu.org/licenses/gpl.html">http://www.gnu.org/licenses/gpl.html</a> ), or anything similar, included or used in, or in the development of, the Supplier Software, or with which the Supplier Software is compiled or to which it is linked;
"Parties"	means the Customer and the Supplier, and includes their permitted successors and assigns;
"Professional Services"	means the consultancy services described in the Statement of Work;
"Quotation"	means a document listing the Goods and/or Service agreed to be provided by the Supplier and the applicable Charges, executed in accordance with clause 3 of these Terms;
"Recipient"	means the recipient of Confidential Information;



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“Relevant IPR”	has the meaning given in clause 9 of the Terms;
“Relevant Requirements”	has the meaning given in clause 9 of the Terms;
“Relevant Transfer Date”	means the Commencement Date or such other date as the parties shall determine;
“Remedial Plan”	has the meaning given in clause 19.6 of the Terms;
“Remedial Plan Process”	has the meaning given in clause 19.6 of the Terms;
“Renewal”	means an extension to Managed Service duration in accordance with clause 1.12 of the Terms;
“Scheduled Maintenance”	means any work scheduled in advance that is required to be carried out which will cause the Services to be suspended. The Supplier shall provide a reasonable notice to the Customer as to when the maintenance should take place;
“Service Credit”	means any credits payable to the Customer in the event of a Service Level Failure;
“Service Definition Document” or “SDD”	means a document describing the scope of the Managed Service and the applicable Service Levels, provided by the Supplier pursuant to the applicable Contract;
“Service Request”	means a request for a service as part of the Managed Service;
“Services”	means the services provided by the Supplier to the Customer pursuant to the Contract;
“Service Levels or SLA”	means the target performance indicators for the Managed Service as detailed in the SDD;
“SLA Failure”	means a failure by the Supplier to meet the agreed SLA;
“Specific Terms”	means the additional terms and conditions applicable to a specific Service as detailed in Schedule 2-6;
“Statement of Work”	a statement of work setting out or referencing Professional Services to be provided by the Supplier pursuant to the Terms;
“Supplier”	means ANS Group Limited a company registered in England and Wales under the registration number 03176761 with a registered address at 1 Archway, Birley Fields, Manchester, M15 5QJ or any permitted successor assign;
“Supplier Published Rates”	means the Supplier’s standard fees;
“Supplier Representative”	means an individual representing the Customer appointed in accordance with clause 11.1 of these Terms;
“Supplier Sales and Marketing Documents”	means the documents and/or information that the Supplier may provide to the Customer in relation to the Goods and/or Services, including but not limited to proposals, leaflets, documents on Supplier’s website, supplier welcome pack, managed services handbook;
“Supported Assets”	means hardware or software that the Managed Service is performed on;
“System”	means the information and communications technology system to be used by the Supplier in performing the Managed Service, including the software, Equipment and communications links between the Supported Assets;
“Term”	means the duration of the Managed Service;
“Terms”	the terms and conditions in this document;



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“Third Party Software”	means software and any documentation which is proprietary to any third party;
“Transferring Employees”	means those employees of the Customer (or any sub-contractor of the Customer) whom the Parties agree are Transferring Employees or in the absence of such agreement those employees of the Customer (or any sub-contractor of the Customer) whose contract of employment transfers to the Supplier by reason of the Parties entering into a Contract and pursuant to TUPE;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);
“VAT”	means value added tax as provided for in the Value Added Tax Act 1994;
“Vendor Maintenance”	relates to hardware and software support provided by the applicable third party vendor. This support usually includes the ability to request replacement hardware components and/or software updates. Included services vary depending on the third party vendor involved;
“Working Day”	means a day other than a Saturday, Sunday or bank or public holiday in England.

2. In these Terms:

- 2.1 a reference to the Terms includes its schedules, appendices and annexes (if any) as varied from time to time and includes each Contract in force;
- 2.2 a Contract in force is a Contract which remains in force at the relevant time in accordance the Terms;
- 2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 2.5 a reference to a gender includes each other gender;
- 2.6 words in the singular include the plural and vice versa;
- 2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 2.8 any obligation on a party not to do something includes an obligation not to allow that thing to be done and any obligation on the Supplier to do or not do something shall be construed as including an obligation to procure that the Supplier's employees and sub-contractors do or do not do that thing; and
- 2.9 the recitals section and any clause, schedule or other headings in these Terms or a Contract are included for convenience only and shall have no effect on the interpretation of the Terms and a Contract in force.



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## 32. SCHEDULE 2 – PROFESSIONAL SERVICES

### 1. PROFESSIONAL SERVICES

- 1.1 The Supplier shall provide the Professional Services in all material respects in accordance with the SOW.
- 1.2 The Professional Services shall commence within 10 Working Days following receipt of the signed Quotation unless the Supplier deems it necessary to commence later.
- 1.3 The Customer shall perform (or procure the performance of) the activities assigned to it under the relevant SOW, or other pre-requisites reasonably required by the Supplier, in a timely manner.
- 1.4 Consultancy Credits can be used by the Customer within 12 months from the Effective Date of the Quotation. It is Customer's responsibility to ensure that such Consultancy Credits are booked with the Supplier at least three calendar months prior to their expiry.

#### Migration of data

- 1.5 The parties shall co-operate with each other in connection with the transition and migration of any of the Customer's data. The Supplier shall use reasonable efforts to ensure the accurate migration of any data but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be responsible for checking the accuracy and completeness of any migrated data and shall promptly give sufficient details to the Supplier of any inaccuracies or omissions in order to permit the Supplier to correct them. The Customer shall also ensure that they take adequate backup of the data prior to such transition and such backup has been verified as to its efficacy.

#### Acceptance Test

- 1.6 The Supplier shall provide the Customer with its intended Acceptance Test Criteria within a reasonable time prior to the commencement of the Professional Services.
- 1.7 The Customer shall ensure it is present whilst the Supplier conducts the Acceptance Tests, however if the Customer decides not to, it will be assumed that the Customer has witnessed the Acceptance Tests. If, in the reasonable opinion of the parties, as determined during the Acceptance Test, the Professional Services or a relevant Milestone meets all of the Acceptance Tests Criteria, the Acceptance Tests will be considered successful. Following the successful Acceptance Tests, the Supplier shall issue an Acceptance Test Certificate for Customer's signature. The Customer shall not unreasonably delay, or withhold the signature on the Acceptance Test Certificate.
- 1.8 If, in the reasonable opinion of the parties as determined during the Acceptance Test, the Professional Services or the relevant Milestone fails to meet any of the Acceptance Test Criteria, the Supplier will remedy the failures and conduct further testing in accordance with this clause 1.8.
- 1.9 If the Customer does not provide a signed Acceptance Tests Certificate within 5 Working Days of the successful completion of the Acceptance Tests then the Professional Services or the relevant Milestone shall be deemed accepted.
- 1.10 Each Party shall bear its own Expenses in respect of Acceptance Tests.



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### **Delays caused by the Customer**

- 1.11 In the event the Customer is causing delays by failing to complete the pre-requisites or by preventing the Supplier from performing the Professional Services in any way, the Supplier shall notify the Customer of such a delay and require the Customer to remedy any such non-conformance within a period of time specified in such notice. If the Customer continues causing a delay, the Supplier shall reserve the right to charge the Customer for additional consultancy days proportionate to the delay caused. Such additional Charges shall be calculated on a man-day basis at the full day-rate in accordance with the Supplier's Published Rates.
- 1.12 The Customer may not cancel or amend a Confirmed Service Date with less than 14 days' notice to the Supplier without incurring additional charges calculated in accordance with the Supplier's Published Rates.

### **Delays caused by the Supplier**

- 1.13 If any delay is caused solely by the Supplier, the Supplier shall (at its own cost) provide such additional consultancy days as it is required proportionate to the delay caused.

### **Invoicing**

- 1.14 Unless otherwise agreed in writing between the Parties, the Charges shall be invoiced as follows:
- 1.14.1 Charges for Professional Service shall be invoiced at 50% on the receipt of the signed Quotation and the remaining 50% on completion or over mutually agreed Milestones;
- 1.14.2 Consultancy Credits shall be invoiced 100% on receipt of signed Quotation.



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### 33. SCHEDULE 3 - MANAGED SERVICES

- 1.1 The Supplier shall provide the Managed Service pursuant to the Service Definition Document (SDD).
- 1.2 The Supplier will only provide the Managed Services to the named contacts nominated by the Customer. It is Customer's responsibility to ensure that these contacts are up to date at all times.
- 1.3 Except for hardware maintenance services stated within the SDD, the Managed Services are provided by the Supplier remotely and if the Customer requires Supplier's support at Customer's premises or any other location, an Additional Service Charge shall apply.
- 1.4 The Supplier does not warrant or guarantee that it will be able to rectify all defects arising in relation to any Third Party Software/services.
- 1.5 Without limiting the Supplier's obligations under these Terms (or any relevant Contract), the Supplier may not be able correct any defect in relation to any Third Party Software/Services until a fix or workaround is made available by the relevant third party vendor, but the Supplier will use all reasonable endeavours to provide a workaround solution for any such defect (where possible) as soon as reasonably practicable.
- 1.6 The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).
- 1.7 The Customer shall not store, distribute or transmit through the Managed Services any material that:
  - 1.7.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethically offensive;
  - 1.7.2 facilitates illegal activity;
  - 1.7.3 depicts sexually explicit images;
  - 1.7.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity;
  - 1.7.5 is known or likely to cause, interrupt, damage, destroy or limit the functionality of any computer software, hardware or telecommunications equipment (including, without limit, files that contain viruses, corrupted files, or any other similar software or programmes);
  - 1.7.6 that invades another's privacy, causes annoyance, inconvenience or needless anxiety to any person;
  - 1.7.7 that is in breach of any other third party's rights, including downloading, installation or distribution of pirated software or other inappropriately licensed software, deletion of any author attributions, legal notices or proprietary designations or labels in any file that is uploaded, falsification of the origin or source of any software or other material.
- 1.8 It is the Customer's responsibility to take all reasonable precautions against unauthorised access to and loss of data and ensure that its data is frequently backed up.
- 1.9 Where applicable and appropriate, the Customer shall comply (and shall procure that any end users shall comply) at all times with the terms of any end user software licences as notified by the Supplier



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to the Customer from time to time, including the terms of the end user licence agreement set out in these Terms.

- 1.10 In the event the Customer is in breach of clauses 0, the Supplier reserves the right to suspend the Managed Services immediately until the Customer has remedied the breach. If the breach is so serious as to potentially harm the Supplier's reputation, it shall be entitled to terminate the Contract with immediate effect and with no liability to the Supplier.
- 1.11 The Customer acknowledges that the Supplier may at any time, with the Customer's prior written approval (such approval not to be unreasonably withheld or delayed), incorporate licence management software into elements of the Managed Services for the purposes of ensuring that licence rights are not exceeded.
- 1.12 For the avoidance of doubt, notwithstanding the suspension of the Services, the Customer shall remain responsible and liable to pay the Supplier for the Charges during the period of suspension.
- 1.13 The Managed Service shall continue for the Initial Term and thereafter shall continue for a period of twelve months (automatically renewing for a further twelve months on each anniversary after the Initial Term) unless and until either Party serves written notice on the other Party to terminate the Managed Service.
- 1.14 A notice to terminate the Managed Service shall only be effective if the Customer provides a minimum of 90 (ninety) days' notice expiring before the expiry of the Initial Term or any anniversary following the Initial Term and has fully paid any sums owing to the Supplier and discharged all obligations under the Contract. Such termination notice shall be sent to [contractcancellations@ansgroup.co.uk](mailto:contractcancellations@ansgroup.co.uk) and followed by a hard copy to Supplier's registered address.

### **Service Levels**

- 1.15 The Supplier shall use its reasonable endeavours to respond to an Incident, Change Request and Service Request within the SLA response times specified in the SDD.
- 1.16 The Service Level arrangements state the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of, the performance and/or availability of the Managed Service, or its non-performance and non-availability.

### **Service Credits**

- 1.17 In the event of a Service Level Failure and subject to the applicable SDD a Service Credit may apply, which shall be accounted for to the Customer only in accordance with clause 1.19 and shall always be subject to clauses 1.18 and 1.21.
- 1.18 Service Credits prescribed in respect of any Service Level Failure (if any) shall be the Customer's sole and exclusive financial remedy for a Service Level Failure.
- 1.19 The Customer may claim a Service Credit by giving written notice to the Supplier by the end of the calendar month following the month in which the relevant Service Level Failure occurred. Upon receiving such notice, the Supplier shall either:
- 1.19.1 Specify the Service Credit sum as a credit against the next invoice which is issued by the Supplier to the Customer under the Contract; or



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- 1.19.2 In the event that the Supplier has not or cannot comply with clause 1.19.1 the Supplier shall pay the Customer the Service Credit sum upon demand.
- 1.20 If, at any time, a single event is the sole and direct root cause of the Supplier failing to achieve the required Service Level target in respect of two or more separate Service Levels, then the Supplier will not be liable for Service Credits in respect of all of the relevant Service Levels. Instead, the Supplier will only be liable for Service Credits in respect of whichever of the relevant Service Levels has the highest amount of Service Credits (when converted into pounds sterling).
- 1.21 Service Credits shall not exceed 10% of the monthly Managed Service Base Charge.
- 1.22 The Supplier shall not be liable to account to the Customer for those Service Credits which arise during, a period of time when the Customer is late in making a payment by the date due for payment (and for the avoidance of doubt the Customer shall not be late in making payment for these purposes for the duration that the relevant amounts are the subject to a bona fide dispute).
- 1.23 The Supplier shall not be liable to account to the Customer for Service Credits arising during or related to Scheduled Maintenance, Emergency Maintenance or as a result of power or environmental failure on Customer's premises.

### **Managed Service Invoicing**

- 1.24 Managed Service Base Charges shall be invoiced annually in advance with the first invoice being issued on the Commencement Date;
- 1.25 Managed Service Flex Charges shall be invoiced when they arise;
- 1.26 Cloud Resource consumption shall be invoiced monthly in arrears;

### **On-Premise Managed Service (additional provisions)**

- 1.27 In the event the Supplier provides the Managed Service on Customer's existing infrastructure, the Supplier may do a technical audit on Customer's infrastructure during an on-boarding process. The Supplier may require the Customer to remedy any defects prior to the commencement of the Managed Services.
- 1.28 The Supplier shall not be liable for any failure to provide the Managed Service on the Supported Assets without a valid vendor maintenance. For the avoidance of doubt, it is Customer's responsibility to ensure that all Supported Assets have a valid vendor maintenance at all times during the term of the Contract and such vendor maintenance shall be purchased from the Supplier in order to give effect to the Managed Service.
- 1.29 In the event the Managed Service is provided on the Supplier's Equipment, the Customer shall:
- 1.29.1 take good care of the Supplier's Equipment to prevent damage or loss to such equipment arising from misuse by Customer personnel in accordance with any applicable Supplier policy or instructions of the Supplier from time to time;
- 1.29.2 maintain adequate policies of insurance which provide cover for the Supplier's Equipment when located at the Customer's premises against the normal risks which the Customer could reasonably be expected to insure against in respect of its own equipment.



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### **Hardware maintenance replacement parts**

- 1.30 Any replacement parts applied to the Goods will become the property of the owner of such Goods and all faulty parts will become the property of the Supplier
- 1.31 The Supplier reserves the right to supply new, second hand or reconditioned replacement parts in the performance of the Services.

### **Managed Service termination due to a persistent breach**

- 1.32 In the event the Supplier fails to meet the agreed SLA on two or more P1 Incidents (as shown in the SDD) each month for a consecutive period of three months, the Customer shall have a right to terminate the Contract with 30 days written notice to the Supplier.

### **Cloud Resource Subscription**

- 1.33 The Cloud Resource Subscription Charges quoted by the Supplier are estimates only. The actual Charges will depend on the third party cloud provider's then current pricing (which may vary month by month) and Customer's consumption.
- 1.34 The Subscriptions shall be automatically suspended should the Supplier not receive payment on or before the due date stated on the invoice.
- 1.35 Subscription cancellations must be sent to [contractcancellations@ansgroup.co.uk](mailto:contractcancellations@ansgroup.co.uk). Cancellation charges may apply.
- 1.36 Any data stored on cloud platforms will be retained for ninety (90) days period following suspension/cancellation following which it will be permanently deleted. It is Customer's responsibility to ensure it take regular back-ups of the data. The Customer may be charged during this period.
- 1.37 The applicable third-party cloud agreement ("Cloud Agreement") as referenced below and as in force from time to time shall be incorporated into and form part of the Contract. In the event of any conflict between these Terms and the Cloud Agreement, the Cloud Agreement shall take precedence.

Microsoft Azure – <https://www.microsoft.com/licensing/docs/customeragreement>

AWS - <https://s3.amazonaws.com/Reseller-Program-Legal-Documents/AWS+Reseller+Customer+License+Terms.pdf>

### **Additional Charges**

- 1.38 For the avoidance of doubt, the Supplier reserves the right to charge an Additional Service Charge where (including but not limited to):
  - 1.38.1 The Customer requests a Managed Service outside of Service Hours by requesting technical assistance (whether via telephone or email). For the avoidance of doubt, the Customer may log an Incident 24/7; and/or



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- 1.38.2 In the reasonable opinion of the Supplier, more than a reasonable level of Managed Service is being provided as a result of the Customers untrained personnel operating the Supported Assets in which case the Supplier shall notify the Customer of the issue and require a prompt remedial action before it seeks to enforce any Additional Service Charges; and/or
- 1.38.3 The Supplier undertakes a remedial action to an Incident which is caused by any technical changes made by the Customer, including Customer's suppliers which have not gone through the Supplier's change advisory board ("CAB").
- 1.39 In the event that an Additional Service Charge is applicable in accordance with clause 1.38, Supplier will, where possible, notify Customer prior to any Additional Services being incurred. Additional Services will be charged in accordance with the Supplier's Published Rates.

#### **SCHEDULE 4 – WAN INSTALLATION**

- 1.1 The Supplier shall not be responsible for cancellation of Customer's existing circuits with Customer's current providers.
- 1.2 In the event the Customer is unreasonably delaying the installation of circuits, the Supplier reserves the right to commence the Manage Service within 90 (ninety) days from the receipt of the signed Quotation.

#### **Circuit rental invoicing**

- 1.3 Circuits shall be invoiced quarterly in advance;



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## 34. SCHEDULE 5 - SALE OF GOODS

- 1.1 The quantity, quality and description of and any specification of the Goods shall be as set out in the Quotation.
- 1.2 The Goods may be delivered to the Customer in advance of the quoted delivery date upon giving reasonable notice to the Customer. Where Goods are shipped directly by the vendor, they may be delivered without prior notice.
- 1.3 If the Customer fails to take delivery of the Goods on the agreed dates, or fails to give the Supplier adequate delivery instructions or fails to make necessary arrangements for accepting delivery at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then the Supplier may store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and other expenses incurred and time expended.
- 1.4 The Supplier reserves the right to refuse to take delivery of Goods returned by the Customer if the Customer has not first obtained a Goods return number and such number is not displayed on the packaging of the Goods returned.
- 1.5 For the avoidance of doubt, the Supplier does not manufacture any Goods and resells the Goods to the Customer only. The Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Supplier and the Supplier assigns the benefit of the same to the Customer. Where the Customer has purchased Goods only (without vendor maintenance or Managed Service) then the risk of the Goods not performing to the Customer's requirements lies with the Customer.
- 1.6 Unless the Customer has purchased the Goods with relevant vendor maintenance or Managed Service, any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the Contract shall be notified to the Supplier within 7 days, otherwise the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the Charge in accordance with the Contract.
- 1.7 The Supplier shall not be liable for any advice or recommendation given to the Customer as to the storage, application or use of the Goods which is not expressly stated within the Contract.

### **Title and risk**

- 1.8 Risk of damage to or loss of the Goods shall pass to the Customer on delivery to the agreed location (whether it is Supplier's or Customer's premises or any location including a storage facility).
- 1.9 Notwithstanding delivery and the passing of risk in the Goods, the title to the Goods shall not pass to the Customer until the Supplier has received payment in cleared funds in full of the price of the Goods.
- 1.10 Until title to the Goods has passed to the Customer, the Customer shall:



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- 1.10.1 Store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as the Supplier's property; and
- 1.10.2 Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 1.10.3 Maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf for their full price against all insurable risks with a reputable insurer.
- 1.11 In the event the Customer fails to pay an invoice for the Goods by the due date for payment, the Supplier may:
  - 1.11.1 Require the Customer to deliver up the Goods to the Supplier and,
  - 1.11.2 If the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods and in doing so the Supplier shall have no liability to the Customer or any third party for loss of Data, software or other information belonging to the Customer or a third party stored on such Goods.

### **Invoicing**

- 1.12 Goods are invoiced 100% on shipment;
- 1.13 Vendor Maintenance is invoiced 100% on shipment of the Goods which the Vendor Maintenance is for;
- 1.14 Software licences to be invoiced 100% on receipt of the signed Quotation;



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## 35. SCHEDULE 6 - CRM SOFTWARE LICENCE AGREEMENT

The following licence agreement shall apply to any CRM software licenses purchased by the Customer as listed in the Quotation

### SOFTWARE LICENSE AGREEMENT

IMPORTANT: THIS SOFTWARE LICENSE AGREEMENT ("LICENSE AGREEMENT") IS A LEGAL AGREEMENT BETWEEN CUSTOMER AND ANS. PLEASE READ IT CAREFULLY BEFORE USING THE SOFTWARE. IT PROVIDES A LICENSE TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION, LIABILITY DISCLAIMERS AND SUPPORT INFORMATION. BY INSTALLING AND USING THE SOFTWARE, CUSTOMER IS CONFIRMING ITS ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THESE TERMS, CUSTOMER MUST UNINSTALL THE SOFTWARE FROM ALL COMPUTERS.

#### 1. Definitions

- (a) "ANS" means ANS Group Limited OR ANS Software and its licensors, if any.
- (b) "Software" means only the ANS Software program(s) supplied by ANS herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation.
- (c) "Customer" means the individual or company that has purchased the Software (whether through an ANS Reseller Partner or directly from ANS) for use with their production or test installation of Microsoft CRM.
- (d) "Partner" means the authorised ANS Reseller Partner from whom Customer has purchased the Software and the entity that will provide initial, first-level technical support for the ANS Products.
- (e) "Term" means the duration of the maintenance and support subscription. All ANS Solutions require a 12 month maintenance and support term that will auto renew upon expiration.

#### 2. License Grants

- (a) Customer may install the Software on Microsoft CRM server computers that have Windows operating systems which are compatible with Microsoft CRM; provided, however, that, notwithstanding anything contrary contained herein, Customer may not use the Software for more than one production installation of Microsoft CRM.
- (b) Customer agrees that ANS may audit its use of the Software for compliance with these terms at any time, upon reasonable notice.
- (c) Customer's license rights under this License Agreement are non-exclusive.

#### 3. License Restrictions

- a) Customer may not alter, merge, modify, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form.



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- b) Customer may not sell, rent, lease, or sublicense the Software.
- c) Customer may not modify the Software or create derivative works based upon the Software.
- d) Customer may not export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder.
- e) In the event that Customer fails to comply with this License Agreement, ANS may terminate the license and Customer must destroy all copies of the Software (with all other rights of both parties and all other provisions of this License Agreement surviving any such termination).

#### **4. Ownership**

The foregoing license gives Customer limited license to use the Software. ANS and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to the Software and all copies thereof. All rights not specifically granted in this License Agreement, including Federal and International Copyrights, are reserved by ANS and its suppliers.

#### **5. LIMITED WARRANTY & WARRANTY DISCLAIMER**

Except as expressly provided herein, the software (including any embedded software) and all services are provided with no other warranties of any kind, and ANS disclaims, to the maximum extent allowed by law, all other warranties, express or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose. ANS does not warrant that the use of the software will be uninterrupted or error-free. No representation or other affirmation of fact, including, but not limited to, statements regarding performance of the software which is not contained in this agreement, shall be binding on ANS. Without limiting the foregoing, any implied warranty or condition of merchantability, and the implied warranty or condition of fitness for a particular purpose are expressly excluded and disclaimed. Further, customer acknowledges that neither customer nor any of its representatives have relied on any representations made by ANS or any ANS representative in relation to the software and/or documentation, except for those expressly stated in this agreement. Customer further acknowledges and agrees that it is solely responsible for the control, operation and security of its network, including, without limitation, any internet transactions and communications carried out using its network with third parties, whether made through access to or use of the software.

#### **6. LIMITATION OF LIABILITY**

(a) ANS shall not be liable to customer or any third party for any indirect, special, incidental, punitive, cover or consequential damages (including, but not limited to, damages for the inability to use equipment or access data, loss of business, loss of profits, business interruption or the like), arising out of the use of, or inability to use, the software and based on any theory of liability including breach of contract, breach of warranty, tort (including negligence), product liability or otherwise, even if ANS or its representatives have been advised of the possibility of such damages and even if a remedy set forth herein is found to have failed of its essential purpose.

(b) ANS' total liability to customer for actual damages for any cause whatsoever will be limited to the greater of £50 or the amount paid by customer for the software that caused such damage.

(c) this agreement shall be interpreted, construed and governed by the laws of the State of Georgia without regard to its provisions with respect to conflict of laws.



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(d) the foregoing limitations on liability are intended to apply to the warranties and disclaimers above and all other aspects of this license agreement.

## 7. Services, Support and New Releases

Customers are required to purchase an annual support contract for each product purchased. It will entitle the Customer to break/fix support and new releases and updates of the purchased product. The cost for the first year's annual support contract is in addition to the purchase price of the Software. Subsequent purchases of additional licenses of the same product fall under the terms of the support contract for the initial purchase. Prior to the anniversary of the initial purchase date, Customer will be invoiced for the auto-renewal of the annual support contract at a price not to exceed the then current published support price of the ANS products owned at the time of support renewal. If customer requests cancellation of support in writing 30 days prior to the expiration of the original 12 month term, the support contract will lapse. Customer may reinstate the support agreement by paying the amount due for the period of time following expiration, as well as the annual support cost for the current annual period.

To submit a Support Ticket, Customer must submit a Support Ticket via email to [contracts@ansgroup.co.uk](mailto:contracts@ansgroup.co.uk). Customer must provide all reasonable details regarding the Support Ticket, including but not limited to, detailed description of the Incident, the duration of the Incident, the number of affected users and the locations of such users and any attempts made by Customer to resolve the Incident. ANS will use all information reasonably available to it to validate Support Tickets and make a good faith judgment on whether the SLA and Service Levels apply to the Support Ticket.

ANS reserves the right to discontinue support, upgrades and/or enhancements to Software at any time and without reason. In the event ANS decides to discontinue support, upgrades and/or enhancements, Customer will be entitled to a refund on any remaining amount paid by Customer for support of Software. The remaining amount will be calculated on a prorated basis based on number of days of the remaining support contract. The annual support contract does not cover support for customised versions of ANS products, whether customised by ANS, the Partner, or end user Customer. ANS does not guarantee that new releases will work with customised versions nor will ANS modify its products to do so without an additional services charge.

## 8. Transferability

Licenses of ANS products may only be used by the licensing organisation. They may not be transferred, re-sold or otherwise assigned to another organisation with prior written consent from ANS.

## 9. General

This License Agreement shall be governed by the internal laws of the State of Georgia, without giving effect to principles of conflict of laws. Customer hereby consents to the exclusive jurisdiction and venue of the state courts sitting in Fulton County, Georgia or the federal courts in Georgia to resolve any disputes arising under this License Agreement. In each case this License Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods. This License Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. Customer agrees that any varying or additional terms contained in any purchase order or other written notification or document issued by Customer in relation to the Software licensed hereunder shall be of no effect. The failure or delay of ANS to exercise any of its rights under this License Agreement



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or upon any breach of this License Agreement shall not be deemed a waiver of those rights or of the breach.

No ANS Partner, dealer, reseller, agent or employee is authorised to make any amendment to this License Agreement.

If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.

ANS and other trademarks contained in the Software are trademarks or registered trademarks of ANS in the United States and/or other countries. Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners. Customer may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software. This License Agreement does not authorise Customer to use ANS or its licensors' names or any of their respective trademarks.

All questions concerning this License Agreement shall be directed to: ANS Group Limited 1 Archway, Birley Fields, Manchester, M15 5QJ.



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## 36. SCHEDULE 7 – DATA PROTECTION

Operative provisions

Definitions as used herein:

**“Applicable Laws”** means all applicable laws, statutes, regulations from time to time in force which relate to the business of the applicable Party.

**“Data Protection Legislation”** means a) to the extent the UK Data Protection Legislation applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier;

**“EU GDPR”** means the General Data Protection Regulation (EU) 2016/679;

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

**“UK GDPR”** means the EUGDPR as it applies to the UK after the end of the transition period (as set out in Article 26 of the EU-UK Withdrawal Agreement) by virtue of section 3 of the European Union (Withdrawal) Act 2018; and

**“data controller”, “data processor”, “data subject”, “personal data”, “processing” and “appropriate technical and organisational measures”** shall be interpreted in accordance with UK Data Protection Legislation.

### 1. DATA PROTECTION

1.1 The parties agree the provisions of this paragraph 1 shall apply to the personal data the Supplier processes in the course of providing the Services. The parties agree that the Customer is the data controller and the Supplier is the data processor in relation to the personal data that the Supplier processes in the course of providing the Services.

1.2 The subject-matter of the data processing is the performance of the Services and the processing will be carried out until the date that the Supplier ceases to provide the Services to the Customer. The obligations and rights of the Customer are as set out in the Contract. Part A (Data processing details) of this Schedule 7 of the Terms sets out the nature and purpose of the processing, the types of personal data the Supplier processes and the categories of data subjects whose personal data is processed.

1.3 When the Supplier processes personal data in the course of providing the Services, the Supplier shall, notwithstanding anything to the contrary in the Terms and at no additional cost to the Customer:

1.3.1 Process the personal data only in accordance with written instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in the Terms or as otherwise notified by the Customer to the Supplier from time to time or as documented



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within a specific service or solution related Data Processing Agreement or Addendum (DPA) and not for the Supplier's own purposes. If the Supplier is required to process the personal data for any other purpose by Applicable Laws to which the Supplier is subject, the Supplier shall inform the Customer of this requirement before the processing, unless that Applicable Law prohibits this on important grounds of public interest (for the avoidance of doubt a simple DPA is included as Appendix Two of these Terms and Conditions in order to allow the share of basic Personally Identifiable Information - PII required in order to maintain the contract) ;

- 1.3.2 Notify the Customer immediately if, in the Supplier's opinion, an instruction for the processing of personal data given by the Customer infringes applicable Data Protection Legislation;
- 1.3.3 Taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures and in so far as it is possible, in fulfilling the Customer's obligations to respond to requests from data subjects exercising their rights; and
- 1.3.4 Taking into account the nature of the processing and the information available to the Supplier, assist the Customer in ensuring compliance with the obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 1.3.5 Implement and maintain appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction, damage or theft of the personal data and having regard to the nature of the personal data which is to be protected. As a minimum, these should include the requirements required under applicable Data Protection Legislation and the requirements set out in Appendix 1 to this Schedule 7. The Supplier shall provide a written description of the technical and organisational methods the Supplier employs for processing personal data, within the timescales required by the Customer;
- 1.3.6 Not give access to or transfer any personal data to any third party (including any affiliates, group companies or sub-contractors) without the prior written consent of the Customer. Where the Customer does consent to the Supplier engaging a sub-contractor to carry out any part of the Services, the Supplier must ensure the reliability and competence of the third party, its employees and agents who may have access to the personal data and must include in any contract with the third party provisions in favour of the Customer which are the same as those in this paragraph 1 and as are required by applicable Data Protection Legislation. Where prior written consent given by the Customer pursuant to this paragraph 1.3.6 authorises a class of third party to process personal data, the Supplier shall inform the Customer of any intended changes concerning the addition or replacement of any sub-contractors within such class, and the Customer shall have the right to object to, and prevent, any such addition or replacement of subcontractors within such class. For the avoidance of doubt, where a third party fails to fulfil its obligations under any sub-processing agreement or any applicable Data Protection Legislation, the Supplier will remain fully liable to the Customer for the fulfilment of the Supplier's obligations under the Terms;
- 1.3.7 Take reasonable steps to ensure the reliability and competence of the Supplier's personnel who have access to the personal data;



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- 1.3.8 Ensure that personnel required to access the personal data have committed to keep personal data confidential and comply with the obligations set out in this paragraph 1 or are under an appropriate statutory obligation of confidentiality;
  - 1.3.9 At the end of the Services upon the Customer's request, securely destroy or return personal data to the Customer and delete existing copies (Applicable Law requires storage of the personal data);
  - 1.3.10 Maintain written records of all categories of personal data processing activities carried out on behalf of the Customer, including any information prescribed in applicable Data Protection Legislation;
  - 1.3.11 Allow the Customer and its respective auditors or authorised agents to conduct audits or inspections during the term of the Agreement and for 12 months thereafter, which will include providing access to the premises, resources, personnel the Supplier or the Supplier's sub-contractors use in connection with the provision of the Services and information maintained in accordance with paragraph 1.3.10, and provide all reasonable assistance in order to assist the Customer in exercising its audit rights under this paragraph 1.3.11. The purposes of an audit pursuant to this paragraph 1.3.11 include verifying that the Supplier and its subcontractors are processing personal data in accordance with the obligations under the Terms and applicable Data Protection Legislation.
  - 1.3.12 If the Supplier becomes aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to the personal data that the Supplier processes in the course of providing the Services (a "Security Incident"), the Supplier shall notify the Customer without undue delay and:
  - 1.3.13 Provide the Customer (as soon as possible) with a detailed description of the Security Incident, the type of data that was the subject of the Security Incident and the identity of each affected person, as soon as such information can be collected or otherwise becomes available (as well as periodic updates to this information and any other information the Customer may reasonably request relating to the Security Incident);
  - 1.3.14 Take action immediately, at the Supplier's own expense, to investigate the Security Incident and to identify, prevent and mitigate the effects of the Security Incident and, with the prior written approval of the Customer, to carry out any recovery or other action necessary to remedy the Security Incident; and
  - 1.3.15 Not release or publish any filing, communication, notice, press release, or report concerning the Security Incident without the Customer's prior written approval (except where required to do so by law).
- 1.4 The Supplier shall not process personal data outside the UK or a country in respect of which a valid adequacy decision applies (as applicable), except with the prior written consent of the Customer. Any such transfer shall be effected in accordance with Data Protection Legislation. For these purposes, and where the Customer provides consent, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commission from time to time (where the UK Data Protection Legislation applies to the transfer).



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- 1.5 The Supplier will indemnify and hold the Customer harmless against all losses, claims, costs, damages or proceedings suffered or incurred by the Customer arising out of or in connection with the Supplier's breach of this paragraph 1, subject to the liability cap set out in clause 18.3.3 above.



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## Appendix 1

### Security Measures

#### 1. ACCESS CONTROL TO PREMISES AND FACILITIES

Measures must be taken to prevent unauthorized physical access to premises and facilities holding personal data. Measures shall include:

- Access control system
- ID reader, magnetic card, chip card
- (Issue of) keys
- Door locking (electric door openers etc.)
- Surveillance facilities
- Alarm system, video/CCTV monitor
- Logging of facility exits/entries

#### 2. ACCESS CONTROL TO SYSTEMS

Measures must be taken to prevent unauthorized access to IT systems. These must include the following technical and organizational measures for user identification and authentication:

- Password procedures (incl. special characters, minimum length, forced change of password)
- No access for guest users or anonymous accounts
- Central management of system access
- Access to IT systems subject to approval from HR management and IT system administrators

#### 3. ACCESS CONTROL TO DATA

Measures must be taken to prevent authorized users from accessing data beyond their authorized access rights and prevent the unauthorised [input, reading, copying, removal] modification or disclosure of data. These measures shall include:

- Differentiated access rights
- Access rights defined according to duties
- Automated log of user access via IT systems



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- Measures to prevent the use of automated data-processing systems by unauthorised persons using data communication equipment

#### **4. DISCLOSURE CONTROL**

Measures must be taken to prevent the unauthorized access, alteration or removal of data during transfer, and to ensure that all transfers are secure and are logged. These measures shall include:

- Compulsory use of a wholly-owned private network for all data transfers
- Encryption using a VPN for remote access, transport and communication of data.
- Creating an audit trail of all data transfers

#### **5. INPUT CONTROL**

Measures must be put in place to ensure all data management and maintenance is logged, and an audit trail of whether data have been entered, changed or removed (deleted) and by whom must be maintained.

Measures should include:

- Logging user activities on IT systems
- Ensure that it is possible to verify and establish to which bodies personal data have been or may be transmitted or made available using data communication equipment
- Ensure that it is possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input;

#### **6. JOB CONTROL**

Measures should be put in place to ensure that data is processed strictly in compliance with the data importer's instructions. These measures must include:

- Unambiguous wording of contractual instructions
- Monitoring of contract performance

#### **7. AVAILABILITY CONTROL**

Measures should be put in place to ensure that data are protected against accidental destruction or loss.

These measures must include:

- Ensuring that installed systems may, in the case of interruption, be restored
- Ensure systems are functioning, and that faults are reported



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- Ensure stored personal data cannot be corrupted by means of a malfunctioning of the system
- Uninterruptible power supply (UPS)
- Business Continuity procedures
- Remote storage
- Anti-virus/firewall systems

## **8. SEGREGATION CONTROL**

Measures should be put in place to allow data collected for different purposes to be processed separately.

These should include:

- Restriction of access to data stored for different purposes according to staff duties.
- Segregation of business IT systems
- Segregation of IT testing and production environments



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## APPENDIX 2 PERSONAL DATA PROCESSING PURPOSES AND DETAILS

<b>Scope of processing</b>	For the provision of IT services and related goods and services, as further set out in the Contract
<b>Nature of processing</b>	As set out in the Contract and, as applicable, in the SDD and/or Statement of Work
<b>Purpose of processing</b>	In the case of data subjects other than staff: for the purpose of providing IT services and support to the Customer's business.  In the case of staff: for the purpose of providing IT services and support for the Customer's employment and HR matters.
<b>Duration of the processing</b>	For the term of the Contract
<b>Types of Personal Data</b>	Names, addresses, phone numbers and email addresses
<b>Categories of Data Subject</b>	Customer personnel Customer clients Customer third parties Business contacts in general



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