

TERMS AND CONDITIONS

BETWEEN:

- (1) **Claritel IT Limited**, a company incorporated under the laws of England and Wales (company number 15271385) with registered address Riverside House, Kingsreach Business Park, Yew Street, Stockport, SK4 2HD, United Kingdom ("**the Company**"); and
- (2) The individual, firm or company named in the Order, Agreement, Contract or Services Schedule ("**the Client**")

WHEREAS

- (A) The Company is in the business of supplying information technology services.
- (B) The Client has requested the Company to provide it with the Services (defined below).

IT IS AGREED AS FOLLOWS

TERMS OF AGREEMENT:

1. Definitions

Unless expressly stated otherwise the following definitions shall apply to the terms used in this Agreement:

"Additional Services" means the provision by the Company of any service in whatever form to the Client during the Term that is not set out in the Schedule at the Effective Date.

"Backup Services" means the backup services to be provided by the Company to the Client as set out in the Schedule;

"Computer Virus" means any programs or data incorporated into software or data that disrupts the proper operation of a computer hardware system or any associated software, and covers malware, ransomware, worm, trojan, spyware, adware, keylogger, and botnet amongst others;

"Confidential Information" means all information passing from the disclosing party to the receiving party relating to the business of the disclosing party (whether disclosed before or after the date of this Agreement), including but not limited to trade secrets, drawings, know-how, techniques, source and object code, business and marketing plans and projections, arrangements and agreements with third parties, formulae, concepts not reduced to material form, designs, plans and models. In the case of the Company, confidential information shall also include without limitation the Software Programs, Documentation, Source Code, all specifications, codes and related technical information;

"Confirmed Order" means a confirmed request in writing by the Client for Additional Services from the Company;

"Designated Personnel" means only the names listed in the Schedule;

“Designated Support Hours” means only the hours listed in the Schedule;

“Documentation” means the manuals and other documentation provided by the Company and any amendment thereto from time to time supplied by the Company or its agents to the Client;

“Effective Date” means the date the Service shall commence as defined in the Schedule;

“Event of Force Majeure” means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, terrorist attack, civil war, civil commotion or riots, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

“Equipment” means the equipment specified in the Schedule and such additions and changes thereto as shall be agreed in writing between the parties and includes Loan Equipment unless otherwise specified in a provision of this Agreement;

“Expenses” means the out of pocket expenses incurred by the Company in acquiring anything reasonably necessary for it to perform its obligations under this Agreement;

“Excusable Downtime” means any period of scheduled maintenance and any period during which any Services are unavailable as a direct consequence of any breach of this Agreement by the Client, the negligence of the Client or its employees, servants or agents, any defect in any website (other than any defect caused by an act or omission of the Company), any incompatibility between platform software and content and any defect in any software provided by the Client to the Company;

“Extended Manufacturer Warranty” means any warranty from time to time purchased by the Client in respect of the Equipment which is in addition to an existing manufacturer’s warranty currently;

“Help Desk Support” means any support provided by the help desk technicians to identify and resolve most support issues remotely;

“Key Worker” means a member of the Company’s staff who has been engaged in the delivery of the Services in an integral and substantive way;

“Maintenance Services” means the maintenance services to be provided by the Company to the Client as specified in the Schedule;

“Intellectual Property” means all intellectual property rights relating to or owned by either party to this Agreement anywhere in the world (including present and future intellectual property rights) and includes without limitation business names or logos, domain names, topography rights, passing-off rights, and copyright (including moral rights), performer protection rights or other industrial, intellectual or commercial rights (including rights in any invention, discovery or process), database rights, patents, trade or service marks, designs, software, computer data, generic rights, software programmes and Source Code and all variations, modifications or enhancements to each of them together with any application or right to apply for registration or protection of those rights;

“Location” means the Client's premises in which the Equipment is installed as specified in the Schedule and/or such other premises as may be agreed in writing between the parties;

“Loan Equipment” means the equipment which the Company shall provide the Client by way of loan as specified in the Schedule during the Term;

“Loan Term” means the period specified in the Schedule;

“Materials” means the materials owned by a party and, in the case of the Company, forming part of the Services including Software Programs, Source Code and Documentation;

“Modification” means a release of an item of software or any fix or patch which corrects faults and fixes bugs in the Software Program and which may include minor enhancements, but which does not constitute a New Version;

“New Version” means any new version, upgrade or enhancement of a Software Program which from time to time is made available or recommended by the Company to the Client;

“Non-Conformity” means any defect or fault in the Service in consequence of which a part of the Service fails to conform in all material respects to the Specification;

“Permitted Use” means any standard operation as set out in the item's user manual or otherwise such use as would ordinarily be regarded as acceptable in the relevant context by an external independent expert;

“Personnel” means the employees, officers, agents or contractors of either party;

“Portable Device” means a laptop computer, mobile phone, tablet computer or any other personal digital device which is readily portable and capable of storing data;

“Software Program” means the computer programs referred to in the Schedule and any Modification and any New Version thereof supplied by the Company to the Client during the Term;

“Service Fee” means the fees specified in the Schedule to be paid by the Client for the performance by the Company of its obligations under this Agreement;

“Services” means those services described in the Schedule and any Additional Services

“Source Code” means program source code, specifications and all other materials and documents necessary to enable a reasonably skilled programmer to use, understand, reproduce, maintain, modify and enhance the Software Program without reference to any other person or documentation whether in eye-readable or machine-readable form and without the need for any external modification;

“Specification” means the specification of the relevant part of the Service as set out in the Schedule;

“Spare Parts” means any such spare parts which are required by the Company to properly perform its obligations under this Agreement;

“Standard Monthly Charge” means the then current undiscounted monthly charges for the relevant service

“Support Requests” means a request made by the Client for support in relation to the Support Services

“Support Services” means the support services to be provided by the Company to the Client as set out in the Schedule;

“Term” means the period stated in the Schedule;

“Third Parties” means other suppliers, service providers, vendors and other third parties contracted with the Client;

“Warranty Period” means the period of 90 days from the delivery or commencement of the part of the Services, Equipment or Spare Part giving rise to the warranty claim by the client.

2. Interpretation

2.1 References to statutes or statutory provisions shall be construed to include references to those statutes or provisions as amended or re-enacted (whether with or without modification) from time to time or as their application is modified by other provisions (whether before or after the date of this Agreement) and shall include any statute or provision of which they are re-enactments (whether with or without modification) and shall also include any orders, regulations, instruments or other subordinate legislation under the relevant statute or statutory provision.

2.2 The headings in this Agreement are for ease of reference only and shall not in any way affect its construction or interpretation.

2.3 Reference to a party to this Agreement shall include its personal representatives, successors in title and permitted assigns.

2.4 The Schedules form part of this Agreement and shall be construed and have the same full force and effect as if expressly set out in the main body of this Agreement, save that in the event of a conflict between the terms of the main body of this Agreement and the terms of the Schedules, the terms of Schedule shall prevail.

2.5 Unless expressly stated to the contrary in this Agreement.

2.5.1 words denoting the singular include the plural and vice versa, words denoting any one gender include all genders and vice versa, and references to persons include individuals, partnerships, bodies corporate and unincorporated associations;

2.5.2 a reference to a recital, clause or Schedule is a reference to a recital or clause of or Schedule to this Agreement and a reference to a sub-clause is a reference to a sub-clause of the clause in which the reference appears;

2.5.3 the words and phrases “other”, “including” “include” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

3. Term

- 3.1 This Agreement shall commence on the Effective Date and will subsist for the Term unless and until terminated earlier in accordance with its terms and conditions.
- 3.2 This Agreement shall remain in full force and effect on the expiry of the Term unless and until terminated in accordance with the Schedule or in accordance with the other termination provisions of this Agreement;

4. Provision of the Services

- 4.1 The Company shall provide the Services to the Client from the Effective Date on the terms and conditions of this Agreement.
- 4.2 The terms of any purchase order or similar document shall not be binding on the parties.

5. Equipment

- 5.1 In accordance with the terms of this Agreement, the Company shall provide by way of loan to the Client for the Loan Term, the Loan Equipment specified in the Schedule subject to the following conditions:
- 5.2 the Company shall at all times retain title to the Loan Equipment;
- 5.3 The Client shall not at any time during the Loan Term use the Loan Equipment in any way other than as permitted in this Agreement or instructed by the Company in writing.
- 5.4 The Company is entitled to recover the Loan Equipment on 14 days' written notice to Client for a breach by Client of clause 5.3 that is not remedied to the Company's satisfaction within 14 days of receipt by the Client of written notice of such breach
- 5.5 The Client shall not sell or purport to sell or otherwise dispose of the Loan Equipment and shall not allow the Loan Equipment or any or any part thereof to be rehired, sublet, lent or otherwise made available to any third party (other than to an affiliated company) without the written consent of the Company.
- 5.6 The Client shall be responsible for loss or theft to the Loan Equipment however arising, and for damage to it caused by:
 - (i) failure by the Client to observe any terms of this Agreement;
 - (ii) negligence or misuse by the Client or the Client's agents;
 - (iii) wilful or accidental damage however occurring.
- 5.7 The Client shall indemnify the Company against all losses, damage, costs, charges and expense arising as a result of its failure to comply with this clause 5. For the avoidance of any doubt the Client shall have no liability whatsoever under this clause 5 for any
 - 5.7.1 direct or indirect loss of or damages to :
 - (a) profit;
 - (b) revenue;
 - (c) business;
 - (d) contract;
 - (e) opportunities;
 - (f) anticipated savings;
 - (g) data;
 - (h) goodwill;
 - (i) reputation;

(j) use;

5.7.2 indirect or consequential loss or damage;

5.8 In accordance with the terms of this Agreement, if specified in the Schedule or by a subsequent Confirmed Order, the Company shall sell the Equipment excluding the Loan Equipment to the Client.

5.9 Unless otherwise agreed in writing, the place of delivery of the Equipment shall be the Client's premises and delivery shall take place once the Equipment has been left with the Client or its agents by the Company or its agents.

5.10 Times for delivery of the Equipment by Company are estimates only and, except by operation of law or as otherwise agreed, time shall not be of the essence.

6. Support Services

6.1 The nature and amount of any Support Services provided to the Client by the Company pursuant to this Agreement are set out in the Schedule.

6.2 In providing the Support Services the Company shall, inter alia:

6.2.1 during the Designated Support Hours help resolve the Client's difficulties and queries in using the services, software or equipment specified in the Schedule.

6.2.2 commit appropriate resources to the provision of support.

6.2.3 prioritise Support Requests based on its reasonable assessment of the severity level of the problem reported; and

6.2.4 aim to resolve Support Requests in accordance with the SLA Response Times set out in the Schedule.

6.2.5 in addition to any visits to the Client's premises already provided for in the Schedule, make visits to the Client's premises at the reasonable request of the Client and where the Company does so the Company's charges specified in the Schedule shall apply.

7. Maintenance Services

7.1 The nature and amount of any Maintenance Services provided to the Client by the Company pursuant to this Agreement are set out in the Schedule.

7.2 During the Term, the Client shall:

7.2.1 ensure that proper environmental conditions are maintained for the Equipment in accordance with the relevant specifications and as notified by the Company to the Client from time to time and shall maintain in good condition the accommodation of the Equipment, the cables and fittings associated therewith and the electricity supply thereto;

7.2.2 not make any modification to the Equipment without the Company's prior written consent;

7.2.3 keep and operate the Equipment in a proper and prudent manner in accordance with the manufacturer's operating instructions and as notified by the Company to

the Client from time to time and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Equipment;

7.2.4 ensure that the external surfaces of the Equipment are kept clean and in good condition and shall carry out any minor maintenance recommended by the manufacturer from time to time and as notified by the Company to the Client from time to time;

7.2.5 use on the Equipment only such operating supplies as the manufacturer shall recommend and as notified by the Company to the Client from time to time;

7.2.6 not use in conjunction with the Equipment any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by the Company;

7.3 The Maintenance Services exclude any maintenance of the Equipment or Software Program which is necessitated as a result of any cause other than the Permitted Use for example as a result of the Company's neglect or fault, including without limitation:

7.3.1 operator error;

7.3.2 failure to install, use or maintain the Equipment or Software Program including to use or accept any Modification or New Version issued by the Company in accordance with this Agreement or as otherwise directed by the Company in writing;

7.3.3 abnormal environmental conditions, unusual physical or electrical stress, damage caused by the Client's or any third party's default, negligence or misuse, including the accidental or deliberate destruction or damage;

7.3.4 use with or faults in third party software or hardware (including failures in telecommunications links) which do not form part of the Equipment or Software Program supported by the Company under the terms and conditions of this Agreement;

7.3.5 a fault in the equipment, software or systems of the Client or any third party;

7.3.6 any alterations or modifications to the Equipment other than those carried out by the Company or its agents;

7.3.7 accident, transport, neglect, misuse, or default of the Client, its employees or agents or any third party;

7.3.8 any head crash or failure of fixed or removable storage media.

7.4 The Company shall not be required to perform any Maintenance Services which involves the replacement of any hardware or hardware part which does not at the time the Maintenance Services is due to be performed qualify for replacement under the manufacturer's warranty or an Extended Manufacturer Warranty for any reason.

7.5 The Company shall if it is reasonably able to do so and at the request and expense of the Client, repair or replace any part of the Equipment which has failed due to a cause other than Permitted Use or due to the Client's neglect or fault subject to the Client accepting the Company's written quotation fee prior to the commencement of work.

8. General Provisions Applicable to the Support Services and the Maintenance Services

Access: the Client shall:

- 8.1 upon reasonable notice, and during Designated Support Hours, provide the Company with full and safe access to the Equipment and Software Program for the purposes of fulfilling its obligations under this Agreement;
- 8.2 provide adequate working space around the Equipment for the use of the Company's personnel and shall make available such reasonable facilities as may be requested from time to time by the Company for the storage and safekeeping of test equipment and Spare Parts;

Notification and information: the Client shall:

- 8.3 immediately notify the Company if the Equipment needs maintenance or is not operating correctly and ensure that only Designated Personnel shall contact the Company to request provision of the Maintenance Services via the telephone or email to **helpdesk@claritel.co.uk** or such other email address as the Company may from time to time advise the Client of in writing. The Client acknowledges the Company shall not be obliged to provide any Maintenance Services or Support Services unless requested to do so by Designated Personnel and in the manner set out in this clause 8.3
- 8.4 make available to the Company access to such of its programs, operating manuals and information as may be reasonably necessary to enable the Company to perform its obligations hereunder and shall if requested by the Company provide staff familiar with the Client's programs and operations, such staff shall co-operate fully with the Company's personnel in the diagnosis of any failure or incorrect operation of the Equipment or Software Program. In this regard, the Company shall only access such programs and materials to the extent strictly necessary for the provision of the Maintenance Services or Support Services.;
- 8.5 make available to the Company free of charge all reasonable facilities and services which are required by the Company to enable it to provide the Support Services or Maintenance Services including, without limitation, telecommunications facilities including a means of gaining remote access to the Software Program where reasonably required, printouts, office accommodation, typing, photocopying and only to the extent required for the Company's performance of the Services, Client Confidential Information;
- 8.6 save as aforesaid, not itself attempt to adjust, repair or maintain the Equipment of Software Program and shall not request, permit or authorise anyone other than the Company or its agents to carry out any adjustments, repairs or maintenance of the Equipment unless agreed by the Company in writing.

Miscellaneous: the Client Shall:

- 8.7 provide such telecommunication facilities as are reasonably required by the Company for testing and diagnostic testing at the Company's expense;
- 8.8 keep full security copies of the Client's programs, data bases and computer records in accordance with best computing practice.
- 8.9 The Client shall be responsible for the cost and provision of all Spare Parts as the Company shall recommend are necessary for the provision of the Maintenance Services and Support Services.

- 8.10 The Client shall keep such Spare Parts at the Location or at a place immediately close thereto. The Company may draw on this stock of Spare Parts for the Maintenance Services and Support Services.
- 8.11 The Company shall not be liable for any delay in performing its obligations if any recommended Spare Parts are not available. The Company shall be entitled to charge the Client for its additional expenses as a result of the purchase of any replacement parts.
- 8.12 The Maintenance and Support Services also exclude:
- 8.12.1 the provision of services other than at the Location (or such other location as the Company shall have approved in writing);
 - 8.12.2 repair or renewal of tapes, disk packs, printing cartridges, batteries, cabling, power leads or other consumable supplies;
 - 8.12.3 recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Equipment or Software Program.
- 8.13 The Company shall make an additional charge, in accordance with its standard scale of charges from time to time in force, for service visits:
- 8.13.1 made at the request of the Client by reason of any fault in the Equipment or Software Program due to causes not covered by this Agreement, or
 - 8.13.2 made at the request of the Client but which the Company finds are frivolous or not necessary in order to enable the Company to comply with its obligations under this Agreement.

9. Training

Where the Company provides training in the use of any Software Programs or Equipment for the staff the charges specified in the Schedule shall apply. Such training shall be subject to the availability of the Company's training personnel

10. Backup

- 10.1 Unless specified as forming part of the Services in the Schedule, nothing shall oblige the Company to back up any Client data, whether stored on the Equipment, any Portable Device or otherwise and the Client acknowledges it is at all times the Client's responsibility to back up all Client data the Company may have access to during the Term.
- 10.2 If specified in the Schedule, the Company shall provide the Backup Service and the Company shall use all reasonable endeavours to keep the backup process functioning according to the Specifications;
- 10.3 Notwithstanding the provision of any Backup Services the Client acknowledges it is its responsibility to test the backup on a monthly basis and ensure it is operating in accordance with the Specifications.
- 10.4 Except for any negligence or wilful default by the Company in no event shall the Company be responsible for any loss, damage, injury, expense arising out of any loss of data stored on the Equipment, any Portable Device or otherwise.

11. Restrictions on Company

- 11.1 The Client acknowledges that the Company's systems, servers, and equipment may from time to time be inoperative or only partly operational as a consequence of mechanical breakdown, maintenance, hardware or software upgrades, telecommunication connectivity problems or other causes outside its control.
- 11.2 In the event of any such interruptions the Company shall notify the Client by phone, e-mail or other communication method as soon as reasonably practicable of any such interruptions to its ability to provide the Services.
- 11.3 The Company agrees to use all reasonable efforts to rectify faults or problems in its systems, servers, and equipment and to restore the system to full operational capacity as soon as reasonably practicable.

12. Limitation of Liability

- 12.1 The Company gives no condition, warranty, or undertaking, and makes no representation to the Client about the suitability of, or fitness of, the Services for the Client's purposes other than those conditions, warranties, undertakings or representations expressly set out in this Agreement.
- 12.2 Except as set out in this Agreement, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise on the part of the Company concerning the quality, performance or other characteristics of the Service, are hereby excluded, except to the extent such exclusion is prohibited by law.
- 12.3 Notwithstanding any other provisions of this Agreement, but subject to sub-clause 12.7, the total liability of the Company arising under or in connection with this Agreement, in aggregate in respect of all claims in each month, however arising, shall in no circumstances exceed a sum equal to four (4) times the annual fee payable under this Agreement.
- 12.4 Notwithstanding any other provision of this Agreement, but subject to clause 12.7, the Company shall have no liability however arising out of or in connection with this Agreement for any:
- 12.4.1 direct or indirect loss of or damage to:
 - (a) profit;
 - (b) revenue;
 - (c) business;
 - (d) contract;
 - (e) opportunities;
 - (f) anticipated savings;
 - (g) data;
 - (h) goodwill;
 - (i) reputation;
 - (j) use;
 - 12.4.2 indirect or consequential loss or damage;
 - 12.4.3 claim arising out of a claim against the Client by a third party.
 - 12.4.4 loss, damage, injury or expense arising out of any Excusable Downtime; and

12.4.5 loss, damage, injury or expense arising out of theft, computer-hacking, any Computer Virus, vandalism or malicious damage of the Materials unless directly caused by the Company or its staff.

12.4.6 the parties agree that each of the sub clauses in sub clause 12.4 and each of the sub-paragraphs (a) to (j) in sub-clause 12.4.1 constitute separate terms and the introductory wording of clause 12.4 shall be applied to each of them separately. If there is any claim or finding that any such individual sub-clause or sub-paragraph is unenforceable for any reason, such unenforceability shall not affect any other provision within clause 12.4 or otherwise.

12.5 Any claim by the Client against the Company however arising shall be fully barred and unenforceable unless written notice of such claim (including without limitation reasonable details of the claim and the amount thereof) shall have been given to the Company reasonably promptly and in any event, no later than twelve (12) months after the date the Client first became (or ought reasonably to have become) aware of the circumstances giving rise to the claim.

12.6 The term “however arising” when used or referred to in clause 12 covers all causes and actions giving rise to the liability of the Company arising out of or in connection with this Agreement and or the Services including (i) whether arising by reason of any misrepresentation (whether made prior to and/or in this Agreement) negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity; or (iii) whether caused by any total or partial failure or delay in supply of the Services.

12.7 The exclusions and limitations of liability in this Agreement shall not apply to the extent prohibited by law, and in particular nothing in this Agreement shall affect liability for:

- (a) death or personal injury caused by negligence to the extent prohibited by the Unfair Contract Terms Act 1977;
- (b) fraudulent misrepresentation or other fraud; or
- (c) for breach of any obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982 to the extent prohibited by the Consumer Protection Act 1987.

13. Charges and Payment

13.1 The parties agree that unless expressly stated in writing by the Company all fees, charges and payments set out in this Agreement or any Schedule to it are exclusive of VAT.

13.2 The Client will pay the Company the Service Fees for the Services as specified and calculated in the Schedule and unless agreed otherwise the payment of the fixed monthly amount is to be made via monthly direct debit or standing order and the payment of any additional amount which is over and above the fixed monthly amount shall be paid no later than 14 days after the date of the Company’s relevant invoice.

13.3 The Support Services and the Maintenance Services do not include any services provided by the Company in excess of the Designated Support Hours. Upon request the Company may at its sole discretion provide supplementary support in excess of the Designated Support Hours and where the Company does so the Company’s standard scale of charges specified in the Schedule shall apply.

- 13.4 The Client shall reimburse the Company for all agreed Expenses reasonably incurred by the Company in performing its obligations under this Agreement.
- 13.5 If the Client fails to pay any amount payable by it under this Agreement, the Company shall be entitled (but not obliged) to charge the Client interest on the overdue amount, payable by the Client forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of the Bank of England. Such interest shall accrue on a daily basis and be compounded quarterly. Alternatively, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.6 Without limiting any other right or remedy available to the Company, the Company may on giving fourteen (14) days' written notice, and without having to account for or to repay any money previously paid to it pursuant to the terms of this Agreement, refuse to commence, complete or deliver any Services or otherwise comply with the provisions of this Agreement on the Company's obligations under this Agreement in the event the Client fails to pay any sums due to the Company under this Agreement.
- 13.7 The Company may at any time increase the Service Fees for the Services specified in the Schedule, and will notify the Client with at least 30 days notice:
- 13.7.1 if the cost to the Company of supplying the Services increases for any reason;
- 13.7.2 pursuant to a direction from any legal or regulatory body or competent authority with jurisdiction over the Company, by the amount set out or otherwise required by such direction;
- 13.7.3 annually to reflect inflation as determined by the Retail Price Index published by the UK Office for National Statistics.

14. Intellectual Property

- 14.1 The parties acknowledge that this Agreement does not have the effect of transferring the ownership of any Intellectual Property.
- 14.2 Any Intellectual Property owned by either party and required for the performance by the other party of its obligations under this Agreement shall be licensed to that other party on a non-exclusive, royalty-free basis solely for the purpose of fulfilling that party's obligations under this Agreement and for the period during which the use of that Intellectual Property by that party pursuant to this Agreement is required.
- 14.3 Subject to clause 14.4, the Client acknowledges and agrees that the Company will own all Intellectual Property in connection with the Company's Materials and that all other Intellectual Property in Materials produced or created by the Company or on its behalf or provided by the Company will remain permanently with the Company regardless of whether such Material is in its original form or in a form modified for the Client's use.
- 14.4 Provided the Client is not in breach of this Agreement, the Company grants to the Client a non-exclusive, royalty-free licence to use the Materials for the Term.
- 14.5 The Client may not modify the Company's Materials for any purpose without the prior written consent of the Company.

14.6 The Client will procure for the Company a licence on a non-exclusive, royalty-free basis to use any existing Intellectual Property owned by a third party and required for the performance by the Company of its obligations under this Agreement and for the period during which the use of those rights by the Company pursuant to this Agreement is required.

15. Client Equipment and Access Routes

The Client shall provide and maintain, at its own cost, all telecommunications services, internet connectivity, computers and other equipment or services relevant to the Services. The Client must comply with all the rules, applicable licence terms and regulations that apply to the communications network or system by which the Client obtains access to the Services.

16. Data Protection

To the extent that the Company processes personal data on behalf of the Client, the provisions of the Data Processing Annex shall apply.

17. Warranties

17.1 The Company warrants that during the Warranty Period the Services will conform in all material respects to the Specification. If, within the Warranty Period, the Client notifies the Company in writing of any defect or fault in the Service in consequence of which a Non-Conformity arises the Company shall, at its option:

(a) endeavour to make such corrections or replace all or part of the Service so as to make it compliant with the relevant Specifications; or

(b) terminate this Agreement by notice in writing to the Client and refund the portion of the Service Fees paid by the Client for the affected part of the Service on return of the affected Equipment or Software Program and all copies thereof, provided the Client provides all the information that may be necessary to assist the Company in resolving the defect or fault, including sufficient information to enable the Company to re-create the defect or fault.

17.2 The Company is only responsible for Non-Conformities caused by defects in the Service. The Company shall have no responsibility or liability for any Non-Conformity or any other non-operation of, or defect in the Service that results from:

17.2.1 operator error;

17.2.2 failure by the Client to use or accept any Modification or New Version issued by the Company;

17.2.3 abnormal environmental conditions, unusual physical or electrical stress, damage caused by the Client's or any third party's default, negligence or misuse, including the accidental or deliberate destruction or damage;

17.2.4 use with or faults in third party software or hardware (including failures in telecommunications links);

17.2.5 use of the Software Programs other than as permitted by this Agreement;

17.2.6 a fault in the equipment, software or systems of the Client or any third party;

17.2.7 failure to install, use or maintain the Software Programs in accordance with the Company's instructions;

17.2.8 any alterations or modifications to the Software Programs or Equipment other than those carried out by the Company or its authorised representatives.

17.3 The Company does not warrant that the use of the Software Programs will be uninterrupted or error-free.

17.4 The Client warrants to the Company that:

17.4.1 the use by the Company of any works or Materials submitted by the Client to the Company under this Agreement will not infringe the rights of any person or contravene any law;

17.4.2 at the time of entering into this Agreement it is not relying on any representation made by the Company which has not been expressly set out in this Agreement;

17.4.3 it hereby instructs the Company to install and maintain up-to-date Computer Virus protection software of not less than industry standard, and take all other reasonable steps to ensure that any software used in connection with the Services, and any material or data provided to the Company will be free from any Computer Virus and will not damage or corrupt any other data or system; and

17.4.4 that it is solely responsible for communicating with persons who access its websites or other sites and that it will not divert any Client complaints or concerns to the Company.

17.4.5 it shall comply with the terms and conditions of any third party software forming part of the Service which the Company makes the Client aware of as if the Client was a party to the licence agreement itself.

18. Termination

18.1 The Company may terminate this Agreement by 1 months' notice in writing to the Client in the event that:

18.1.1 the Client fails to pay any amount to the Company due under this Agreement and does not make that payment within fourteen (14) days after receiving written notice requiring the Client to do so;

18.1.2 the Client fails to perform any other of its obligations under this Agreement and such failure is not remedied by the Client to the Company's satisfaction within fourteen (14) days after receipt by it of written notice requiring the default to be remedied; or

18.1.3 any of the warranties or representations made by the Client contained in this Agreement is false or inaccurate in any material way.

18.1.4 if the Client is subject to a change of control (including any change of control which results from one or more persons acting in concert) and in this clause "control" shall have the meaning given to it by section 840 Income and Corporation Taxes Act 1988;

18.2 The Client may terminate this Agreement by 1 months' notice in writing to the Company in the event that:

18.2.1 the Company fails to perform any of the obligations on its part to be observed or performed pursuant to this Agreement and such failure is not remedied by the Company within fourteen (14) days after receipt by it of a notice in writing requiring the default to be remedied; or

18.2.2 any of the warranties or representations made by the Company contained in this Agreement are false or inaccurate in any material way.

18.3 Either party may terminate this Agreement immediately on giving written notice to the other party (the "defaulting party") if the defaulting party:

18.3.1 commits a material breach of this Agreement which is not capable of remedy or commits a material breach of this Agreement which if capable of remedy is not remedied within 14 days of receipt by the defaulting party of a notice in writing requiring the breach to be remedied provided such notice sets out the particulars of the breach in reasonable detail;

18.3.2 has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up other than for the purpose of a bona fide scheme of solvent reconstruction or amalgamation, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets which is not discharged or paid out in full within three Business Days or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the relevant party is incorporated, resident or carries on business.

18.4 Any termination of this Agreement however arising shall not affect:

18.4.1 any right or liabilities which have accrued prior to the time of termination;

18.4.2 the continuance in force of any provision hereof which expressly or by implication is intended to come into or continue in force after termination, including, without limitation, clauses 12, 18 and 21.

18.5 On termination for any reason:

- (a) all rights granted to each party under this Agreement shall cease;
- (b) the Client shall immediately pay to the Company any sums due to the Company under this Agreement and the Company shall immediately deliver to the Client any Equipment, Spare parts ordered on behalf of the Client and paid for by the Client;
- (c) both parties shall immediately destroy or return to the other party (at the other party's option) all copies of the Materials and Documentation then in its possession, custody or control and, in the case of destruction, certify to the other party that it has done so.
- (d) the Client shall immediately uninstall any Software Program as directed by the Company in respect of which it does not held any rights of usage

19. Early Termination Charges

19.1 If the Client terminates this Agreement early other than under the provisions of clause 18, it shall pay the Company the early termination charges set out in this clause 19. The

termination charge shall be calculated as set out below on the basis of the unexpired portion of the Term multiplied by the following percentage(s) of the "monthly Service Fee. The termination charges shall be:-

19.1.1 for a 12 month contract, the greater of (i) 70% of the Monthly Service Fee for each unexpired month (or part thereof) of the Term; or (ii) three months' Service Fee.

19.1.2 for a 24 month contract:-

70% of the monthly Service Fee for each unexpired month, or part thereof, of the first 12 months of the Term (if any) and
30% of the monthly Service Fee for each unexpired month, or part thereof, of the 13-24 month period of the Term.

19.1.3 for a 36 month contract:-

70% of the monthly Service Fee for each unexpired month, or part thereof, of the first 20 months of the Term (if any); and 30% of the monthly Service Fee for each unexpired month, or part thereof, of the 21-36 month period of the Term

19.1.4 for all contracts greater than 36 months:-

70% of the monthly Service Fee for each unexpired month, or part thereof, of the first 20 months of the Term (if any); and

30% of the monthly Service Fee for each unexpired month, or part thereof, of the period from 21 months to the end of the Term

19.2 The Client agrees that the early termination charges in this clause 19 represent the genuine estimate of loss to the Company, including but not limited to its initial set up costs, and are not a penalty.

20. Non Solicitation

20.1 The Client shall not, without the prior written consent of the Company at any time during the Term or 12 months after its termination or expiry directly or indirectly solicit or entice away from the Company or employ or attempt to employ a Key Worker

20.2 Any consent given by the Company in accordance with clause 20.1 shall be subject to the Client paying to the Company a sum equivalent to the highest of 20% of the then current annual remuneration of the Key Worker or 20% of the annual remuneration to be paid by the Client to the Key Worker.

20.3 The Client acknowledges that it would gain substantial benefit and that the Company would be deprived of such benefit if the Client were to directly or indirectly hire a Key Worker in breach of clause 20.1. The Client agrees that it would be extremely difficult to ascertain the actual amount of damages caused to the Company by breach of clause 20.1. Therefore, in the event the Client violates this provision, the Client shall immediately pay the Company an amount equal to 50% of the employee's total annual compensation as liquidated damages and the Company shall have the option to terminate this Agreement without further notice or liability to the Client. The amount of the liquidated damages reflected herein is not intended as a penalty and the Client

acknowledges it is reasonably calculated based upon the projected costs the Company would incur to identify, recruit, hire and train suitable replacements for such personnel.

21. Confidential Information

- 21.1 Each Party acknowledges that it may be furnished, receive or otherwise have access to Confidential Information of the other party in connection with this Agreement.
- 21.2 If necessary to accomplish its obligations under this Agreement, the receiving party may disclose Confidential Information of the disclosing party to any of its employees, officers, directors, contractors or agents provided such person has a legitimate need to know the information for the purposes of this Agreement and is bound to the receiving party to protect the confidentiality of the information in a manner substantially equivalent to that required of the receiving party. The receiving party may also disclose Confidential Information of the disclosing party to the receiving party's auditors provided they are made aware of the receiving party's obligations of confidentiality with respect to the disclosing party's Confidential Information.
- 21.3 The receiving party will keep the Confidential Information of the disclosing party confidential and secure and will protect it from unauthorised use or disclosure by using at least the same degree of care as the receiving party employs to avoid unauthorised use or disclosure of its own Confidential Information of a similar nature, but in no event less than reasonable care.
- 21.4 If any unauthorised disclosure of, loss of, suspected inappropriate access of, or inability to account for any Confidential Information of the disclosing party occurs, the receiving party will promptly notify the disclosing party and will cooperate with the disclosing party and take such actions as may be necessary or reasonably requested by the disclosing party to minimise the violation and any damage resulting from it.
- 21.5 The obligations of confidentiality under this Agreement do not extend to information that:
- (a) at the time of disclosure is in the public domain;
 - (b) after disclosure becomes part of the public domain otherwise than by breach by a party of the provisions of this Agreement;
 - (c) was already in the possession of the receiving party at the time of disclosure;
 - (d) was received by the receiving party after disclosure from a third party who was not required to hold it in confidence; or
 - (e) was independently developed by the receiving party without use of or reference to any Confidential Information of the disclosing party and/or
 - (f) is trivial and/or obvious

22. Subcontracting

The Company may sub-contract the performance of any of its obligations under this Agreement.

23. Force Majeure

- 23.1 If the Company is delayed, hindered or prevented in the performance of any of its obligations under this Agreement by an Event of Force Majeure, the Company shall have no liability (or be in breach) in respect of the performance of such of its obligations as are delayed, hindered or prevented by the Event of Force Majeure and any timescales

or dates for performance in this Agreement shall be extended to take account of such period.

- 23.2 If the Company is delayed, hindered or prevented from performance of its obligations by an Event of Force Majeure for a period in excess of 14 days, the Client shall be entitled at its discretion to perform, suspend performance of, and/or terminate this Agreement.

24. Transfers

- 24.1 The Client shall not sub-licence, assign or otherwise transfer the benefit or burden of this Agreement in whole or in part, or to allow the Equipment or Software Program to become the subject of any charge, lien or encumbrance without the prior written consent of the Company.

- 24.2 The Company may with the consent of the Client sub-licence, assign, charge, or otherwise transfer any of its rights or obligations under this Agreement and may deal in any way with its rights and interests in the Software Program or Equipment. The Client shall enter into any documentation reasonably required by the Company in order to effect any such transfers to third parties.

25. Waiver

Any failure to exercise or delay by a party in exercising a right or remedy arising in connection with this Agreement or by law shall not constitute a waiver of such right or remedy or of any other rights or remedies. No waiver shall be effective unless in writing and signed by the relevant party or on his behalf by a duly authorised representative. A waiver of a right or remedy on one occasion shall not constitute a waiver of the same right or remedy in the future.

26. Severability

If any one or more provisions of this Agreement shall be declared to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this Agreement shall not as a result in any way be affected or impaired. However, if any provisions of this Agreement shall be adjudged to be void or ineffective but would be adjudged to be valid and effective if part of the wording were deleted or the scope or periods reduced, they shall apply with such modifications as may be necessary to make them valid and effective while adhering as closely as possible to the original intent, period and scope of the provisions and the parties hereby undertake to make such modifications.

27. Amendments

Save as expressly provided in this Agreement no variation of this Agreement shall be effective unless it is made in writing and signed by each of the parties to this Agreement or on their behalf by duly authorised representatives. For the purposes of this clause, the expression "variation" includes any supplement, deletion or replacement however effected.

28. Relationship of the Parties

- 28.1 Nothing in this Agreement shall be:

28.1.1 deemed to constitute a partnership, joint venture, representative or agency relationship between the parties hereto; or

28.1.2 construed or have effect as constituting any relationship of employer and employee between the parties.

28.2 Neither party shall have the authority to bind or pledge the credit of, or oblige, the other in any way without obtaining the other's prior written consent.

29. Third Party Rights

No provision of this Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a party to this Agreement pursuant to the Contracts Right of Third Parties Act 1999.

30. Notices

Any notice required to be given pursuant to this Agreement shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this Agreement. Notices may be sent by registered post.

31. Entire Agreement

31.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement or understanding between the parties with respect to the arrangements contemplated by or referred to in this Agreement.

31.2 Each of the Company and the Client acknowledges and agrees that:

31.2.1 in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to this Agreement or not) which is not expressly set out in this Agreement; and

31.2.2 the only remedy available to it for breach of any statement, representation or other term that is expressly set out in this Agreement shall be for breach of contract under the terms of this Agreement.

31.3 Nothing in this clause 31 shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

32. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English courts.

SCHEDULE - DATA PROCESSING

1 DEFINITIONS

Applicable Law means any law, statute, regulation, by-law or subordinate legislation in force from time to time which a party is subject and/or in any jurisdiction in which the party operates;

Business Day means any day other than a Saturday, Sunday or public holiday in England;

Complaint means a complaint or request relating to either party's obligations under Data Protection Legislation relevant to this Contract, including any compensation claim from a Data Subject or any notice, investigation or other action from a Supervisory Authority;

Data Controller, Data Processor, Data Subject, Personal Data and Processing have the meaning given to that term (or to the term 'controller' or 'processor' as applicable) in Data Protection Legislation;

Data Protection Legislation means any Applicable Law relating to the processing, privacy, and use of Personal Data, as applicable to the Client, the Company and/or the Services, including:

- (a) in the United Kingdom:
 - (i) the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC (ePrivacy Directive); and/or
 - (ii) the General Data Protection Regulation (EU) 2016/679 (GDPR), and/or any corresponding or equivalent national laws or regulations including the UK-GDPR (United Kingdom General Data Protection Regulation) (Revised UK DP Law); and
- (b) any judicial or administrative interpretation of any of the above, any guidance guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority;

Data Subject Request means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Legislation;

Personal Data Breach means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;

Protected Data means Personal Data received from or on behalf of the Client in connection with the performance of the Company's obligations under this Contract; and

Supervisory Authority means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation.

In this Schedule:

- (a) references to any Applicable Laws (including to Data Protection Legislation) shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including particularly the GDPR and/or the Revised UK DP Law) and the equivalent terms defined in such Applicable Laws, once in force and applicable;
- (b) a reference to a law includes all subordinate legislation made under that law; and

- (c) the paragraphs in this Schedule shall survive termination or expiry of this Contract (or any of the Services).

2 TERMS

- 2.1 The parties agree, for the purpose of this Contract, the Client shall be the Data Controller and the Company shall be the Data Processor.
- 2.2 The Company shall comply with Data Protection Legislation in connection with the Processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under this Contract.
- 2.3 The Client shall comply with Data Protection Legislation in respect of its obligations in connection with this Contract.
- 2.4 The Processing to be carried out by the Company under this Contract shall comprise the processing set out in Appendix 1 (Data Processing Details), and such other processing as agreed by the parties in writing from time to time.
- 2.5 When Processing Protected Data the Company shall:
- 2.5.1 only Process Protected Data to the extent and in such a manner as is reasonably necessary to provide the Services in accordance with the Client's instructions set out in this Schedule and Appendix 1 and as updated from time to time by the written agreement of the parties (Processing Instructions) except to the extent Applicable Law prevents the Company from complying with such instructions, in which case the Company shall inform the Client of this requirement before Processing the Protected Data (unless the legal requirement prohibits this);
- 2.5.2 within a reasonable period, notify the Client when it becomes aware of any instruction which may infringe Data Protection Legislation;
- 2.5.3 implement appropriate technical and organisational security measures so as to ensure a level of security appropriate to the risks that are presented by the Processing of Protected Data, in particular unauthorised disclosure, access or Processing, accidental loss, alteration or destruction. These measures must to a minimum be in accordance with Data Protection Legislation;
- 2.5.4 ensure access to Protected Data is limited to the authorised personnel who have received adequate training on compliance with this Schedule and Data Protection Legislation, who need access to it to supply the Services and are subject to an obligation to keep the Protected Data confidential;
- 2.5.5 notwithstanding clause 2.5.2 above, notify the Client of any Personal Data Breach without undue delay (but in no event later than twenty-four (24) hours after becoming aware of the Personal Data Breach) and provide such details as the Client requires in relation to the Personal Data Breach including:
- 2.5.5.1 the nature of the Personal Data Breach, including the categories and approximate numbers of Data Subjects and data records concerned;
- 2.5.5.2 the likely consequences of the Personal Data Breach;
- 2.5.5.3 any investigations into the Personal Data Breach;
- 2.5.5.4 any measures taken or the Client recommends to address the Personal Data Breach; and
- 2.5.5.5 steps taken to mitigate its possible adverse effects.
- 2.5.6 refrain from responding to any Complaints or Data Subject Requests the Company received directly without the Client's prior written approval. The Company shall record and then refer all Data Subject Requests and Complaints to the Client within

- five (5) Business Days of receipt and provide the Client with any information and take such action as the Client requests;
- 2.5.7 provide the Client with full co-operation and assistance in relation to any Complaint or Data Subject Request received by the Client;
- 2.5.8 maintain complete, accurate and up to date records of all Processing activities carried out on behalf of the Client in accordance with Data Protection Legislation and make copies of these records available to the Client upon request (and in any event within three (3) Business Days);
- 2.5.9 provide the Client with information and co-operation when required to assist the Client's compliance with Data Protection Legislation, including but not limited to matters relating to the security of Processing, undertaking data impact assessments and prior consultation with a Supervisory Authority and any remedial action and mandatory notifications to a Supervisory Authority and/or Data Subject where required in response to a Personal Data Breach;
- 2.5.10 at no cost to the Client, allow for and contribute to audits, including inspections, subject to reasonable notice, conducted by the Client or another auditor mandated by the Client for the purpose of demonstrating compliance by the Company with its obligations under Data Protection Legislation and this Schedule. The Company shall promptly resolve at its own costs and expense all data protection and security issues discovered by the Client that reveal a breach or potential breach of its obligations under this Schedule and the Client may suspend the transfer of Protected Data until the breach is remedied;
- 2.5.11 not engage another Data Processor for carrying out any Processing in respect of the Protected Data without the Client's prior written consent other than those already engaged by the Company at the date of this Contract whose names have been provided to and accepted by the Client. Where the Client gives such written consent and the Company allows a third party to Process the Protected Data, the Company shall ensure that the third party enters into a written contract with obligations offering at least the same level of protection for the Protected Data as those set out in this Schedule; and
- 2.5.12 not transfer the Protected Data outside the European Economic Area without the Client's prior written consent.
- 2.6 The Company shall without charge and within fourteen (14) Business Days, either securely delete or return the Protected Data to the Client in such form as the Client reasonably requests after the earlier of:
- 2.6.1 expiry or termination of the Contract;
- 2.6.2 where the Processing of the Protected Data by the Company is no longer required for the Company's performance of its obligations under the Contract; or
- 2.6.3 the Client otherwise requests.
- 2.7 Nothing in this Schedule shall relieve the Company of its own direct responsibilities and liabilities under Data Protection Legislation.

APPENDIX 1

DATA PROCESSING DETAILS

1. SUBJECT-MATTER OF PROCESSING:

Employees of Client and persons engaged by the Client as independent contractors or consultants

2. DURATION OF THE PROCESSING:

For the duration of the contract

3. NATURE AND PURPOSE OF THE PROCESSING:

To provide the services under the contract

4. TYPE OF PERSONAL DATA:

Employee names, email addresses and mobile numbers

5. CATEGORIES OF DATA SUBJECTS:

Employees

6. PROCESSING INSTRUCTIONS

Process the personal data only for the purposes of providing the services under the contract.