OCSL Terms and Conditions

Version 2.7

1.   Definitions and Interpretation

1.1   The following are the terms and conditions ("the Agreement") under which OCSL provides computer hardware, computer software, support, consultancy and other information technology services to the Customer, as further set out in the Schedule(s) hereto. This Agreement shall, unless otherwise expressly stated in writing, apply to the subject matter of any agreement in respect thereof.

1.2   The Customer may agree to one or more Schedule(s), either at the date hereof or subsequently. Each such Schedule shall, together with the clauses contained herein, form a separate and distinct contractual agreement between the OCSL entity referred to in clause 1.3 below and the Customer.

1.3   In this Agreement the following words and phrases shall, unless the context otherwise requires, have the following meanings:

"Applicable Law"	means as applicable and binding on the Customer, OCSL and/or the Agreement:
	(a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party or this Agreement is subject and/or in any jurisdiction that the services under this Agreement are provided to or in respect of;
	(b) the common law and laws of equity as applicable to the parties from time to time;
	(c) any binding court order, judgment or decree; or
	(d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
"Background IPRs"	means any and all IPRs that are owned by, or licensed to, OCSL as at the date of this Agreement or which are or have been developed independently of this Agreement by OCSL;
"Bribery Laws"	means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;
"Business Day"	means any day which is not a Saturday, Sunday or public holiday in the UK;
"Control"	has the meaning given to it in section 1124 of the Corporation Tax Act 2010 OR means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;
"Confidential Information"	means all confidential information (however recorded, preserved or disclosed) of a party or its Group Company including but not limited to:
	(a) this Agreement;
	(b) any information that would be regarded as confidential by a reasonable business person relating to:

	(i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of the Disclosing Party's Group Company; and (ii) the operations, processes, product information, know-how, technical information, financial information, designs, trade secrets or software of the Disclosing Party or of the Disclosing Party's Group Company; and (c) any information that is labelled as such (d) any information, findings, data or analysis derived from Confidential Information; but not including any information that: (e) is or becomes generally available to the public other than as a result of its disclosure by the Recipient in breach of this agreement or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or (f) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or (g) the parties agree in writing is not confidential or may be disclosed; or (h) is independently developed by the receiving party, which independent development can be shown by written evidence; or (i) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
"Customer"	means: the individual, business, or other organisation (as may be named in a quotation, statement of work or other document referred to herein) to whom OCSL has agreed to provide products or services in accordance with this Agreement;
"Customer Data"	means all data, information, and other materials in any form (including derivatives) relating to the Customer (and/or its customers) and which may be accessed, generated, collected, stored or transmitted by OCSL (or any OCSL contractor) in the course of the performance of any services;
"Customer Materials"	means any Customer software, Customer Data, Customer IPRs, calculations, algorithms, methods, information and other materials created or supplied by the Customer;

"Data Controller"	shall have the meaning as set out in the Data Protection Laws;
"Data Processor"	shall have the meaning as set out in the Data Protection Laws;

"Data Protection Laws"	means as applicable and binding on the Customer, OCSL and/or the services:
	
	(a) in the United Kingdom:
	
	    (i) the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or
	
	    (ii) the GDPR, and/or any corresponding or equivalent national laws or regulations;
	
	(b) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant member state laws or regulations giving effect to or corresponding with any of them; and
	
	(c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;

"Data Protection Losses"	means all liabilities, including all:
	
	(a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
	
	(b) to the extent permitted by Applicable Law:
	
	    (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
	
	    (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
	
	    (iii) the reasonable costs of compliance with investigations by a Supervisory Authority;

"Data Subject"	shall have the meaning as set out in the Data Protection Laws;
"Data Subject Request"	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
"Disclosing Party"	means a party to this agreement which discloses or makes available directly or indirectly Confidential Information;
"Force Majeure Event"	means an event of the type specified in clause 16 below;
"GDPR"	means the General Data Protection Regulation (EU) 2016/679;
"GDPR Date"	means from when the GDPR applies on 25 May 2018;
"Group Company"	means each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company and "**Group Companies**" shall be interpreted accordingly;

"Indemnity Conditions"	Means the conditions set out in clauses 9.3 and 9.5;
"IPRs"	any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions;
"Liability"	Means, when capitalised, liability in or for breach of contract, negligence, misrepresentation, tortious claim, restitution, Data Protection Losses or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement. "Liable" shall be construed accordingly;
"Liability Provisions"	Means the provisions set out in clause 12;
"Normal Working Hours"	means the hours of 9am to 5pm Monday to Friday excluding bank and public holidays in England & Wales;
"OCSL"	means Organised Computer Systems Limited (OCSL) a company incorporated under the laws of England and Wales (registered number 02563193) of East House, Newpound Common, Wisborough Green, West Sussex RH14 0AZ or such of its Group Companies as may be specified in a Schedule or a document annexed to a Schedule;
"Personal Data"	Shall have the meaning as set out in the Data Protection Laws;
"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;
"processing"	When used in clause 15 below has the meanings given to that term in Data Protection Laws (and related terms such as process have corresponding meanings);
"Protected Data"	means Personal Data received from or on behalf of the Customer in connection with the performance of OCSL's obligations under this Agreement;
"Recipient"	means a party to this agreement which receives or obtains directly or indirectly Confidential Information;
"Representatives"	means, in relation to the Recipient: (a)　　its officers and employees and those of its Group Company that need to know the Confidential Information for the purpose of

	enabling the Recipient to comply with its obligations of this Agreement;
	(b) its professional advisers or consultants who are engaged to advise that party in connection with the Agreement;
	(c) its contractors and sub-contractors engaged by that party in connection with the Agreement; and
	(d) any other person to whom the Disclosing Party agrees in writing that Confidential Information may be disclosed.
"Schedule"	Means the relevant document listed in clause 2.2. "**Schedules**" shall be interpreted accordingly;
"Sub-Processor"	means another Data Processor engaged by OCSL for carrying out processing activities in respect of the Protected Data on behalf of the Customer;
"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 Laws;
"Termination Provisions"	Means the provisions set out in clause 17;
"Third Party Rights"	Means the rights and restrictions set out in clause 27;
"Unlimited Liability Provisions"	Means clauses 12.4 and 12.5;
"Variation"	means the alteration or modification of the design, quality or quantity of products or services, and includes the addition, omission or substitution of any products or services and the alteration of the kind or standard of any of the products or services. "**Vary**" shall be interpreted accordingly;

1.4   In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.5   Unless the context otherwise so requires, references to any gender include all genders.

1.6   Headings in this Agreement are for convenience only and shall not affect the construction of this Agreement and its interpretation.

1.7   a reference to a 'party' means either OCSL or the Customer and includes that party's personal representatives, successors and permitted assigns.

1.8   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.

1.9   a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.10   words in the singular include the plural and vice versa;

1.11 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;

1.12 Save for the reference in clause 1.13 below, any reference to this Agreement shall be taken to be a reference to the distinct and separate contractual agreement which comprises of: the clauses contained herein, the Schedule, and its respective schedules, appendices and annexes (if any);

1.13 In the event of a conflict between the clauses contained in this Agreement and the terms of the Schedules, the clauses contained in this Agreement shall prevail. In the event of a conflict between a Schedule and any other document, schedule, annex or appendix referred to therein, the Schedule shall set out the order of precedence.

2.   Schedules

2.1 Each Schedule annexed to this Agreement sets out the separate terms and conditions upon which, together with the clauses set out herein, OCSL will provide products and services to the Customer.

2.2 The following Schedules are incorporated herein:

2.2.1 Managed Services Schedule.

3.   Application of Terms

3.1 The services and products supplied pursuant to this Agreement shall be to the exclusion of all other terms and conditions whatsoever. No terms or conditions endorsed upon, delivered with, or contained in any order, acknowledgement of order, specification or any other document will form part of this Agreement.

3.2 The written or oral acceptance of any quotation or statement of work by the Customer; or the authorisation by the Customer of the services or delivery of the products; or the commencement of the services; shall be deemed to be the formation and conclusion of a contract subject to this Agreement.

4.   Customer Warranties

4.1 The Customer warrants and represents that (and throughout the term of the Agreement, continues to warrant that):

4.1.1 it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to OCSL, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement, including any third-party licences and consents in respect of any Customer software; and any hardware or software supplied by the Customer shall not cause OCSL to infringe the rights, including any IPRs of any third party.

4.1.2   it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Customer.

4.1.3   it has the authority to grant any rights to be granted to OCSL under this Agreement, including any rights required for the provision of goods and services and otherwise in connection with this Agreement;

5.   Customer Obligations

5.1   The Customer shall:

5.1.1   comply with the terms of this Agreement and all Applicable Laws in a timely and efficient manner, and in the event of any delays in the Customer's provision of such assistance, OCSL may adjust any timetable or delivery schedule set out in this Agreement as is reasonably necessary;

5.1.2   provide OCSL with all necessary co-operation in relation to this Agreement and all necessary access to such information and premises as may be required by OCSL in order to supply any goods or services hereunder;

5.1.3   provide assistance through its personnel as may be reasonably required by OCSL from time to time;

6.   OCSL Warranties

6.1   OCSL warrants that:

6.1.1   it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of OCSL;

6.1.2   it owns or has obtained valid licences, consents, permissions and rights to enable it to comply with this Agreement and to use any of the IPRs necessary for the fulfilment of all its obligations under this Agreement including for the Customer's use and receipt of goods and services, and OCSL shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;

7.   OCSL Obligations

7.1   OCSL shall:

7.1.1   comply with all Applicable Laws in the country in which Services are to be performed;

7.1.2   provide services using reasonable skill and care;

7.1.3   ensure that all personnel and sub-contractors used by OCSL in the performance of such services are adequately skilled and experienced for the activities they are required to perform;

7.2　The obligation at clause 7.1.2 shall not apply to the extent of any non-conformance that is caused by the use by the Customer of a service contrary to OCSL's instructions or by the Customer's breach of its own obligations under this Agreement.

8.　Charges and Payment

8.1　The Customer shall pay to OCSL:

8.1.1　The charges and fees set out in the relevant Schedule in the manner set out therein;

8.1.2　any additional sums which, in the OCSL's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Customer Materials or any other cause attributable to the Customer;

8.2　All charges and fees are exclusive of any Value Added Tax or other applicable sales taxes, for which the Customer shall be additionally liable at the applicable rate from time to time. In the case of supply to a Customer outside the UK the Customer shall be responsible for all import levies, customs duties or other similar taxes of whatever nature.

8.3　OCSL shall be entitled to invoice the Customer following the end of each month in which any services are provided, or at such other times as may be specified in the Schedule.

8.4　Invoices shall be payable in Pounds Sterling. OCSL's charges and fees payable shall be paid by the Customer (together with any applicable Value Added Tax or sales taxes) within 30 days of the date of OCSL's invoice unless otherwise agreed in the relevant Schedule.

8.5　The time stipulated for payment shall be of the essence of this Agreement and failure to pay the charges or fees within the period specified shall, in the absence of a written explanation from the Customer that has been duly accepted by OCSL, render the Customer in material breach of this Agreement and the relevant Schedule.

8.6　If OCSL has not received payment within seven days after the due date, and without prejudice to any other rights and remedies of OCSL:

8.6.1　OCSL shall be under no obligation to provide any services while the invoice(s) concerned remain unpaid;

8.6.2　OCSL shall be entitled to revoke or suspend any third-party licences granted under this Agreement; and

8.6.3　OCSL may charge interest on any outstanding amount due from the Customer at the rate of 4% above the base rate of the Bank of England from time to time in force, after as well as before judgment on any amount due from the Customer to OCSL from the date due for payment until the outstanding payment is received in full.

8.7　If payment of any invoice is not otherwise due it shall become automatically due immediately on the commencement of any act or proceeding in which the Customer's solvency is involved.

8.8　No payment shall be deemed to have been received until OCSL has received cleared funds.

8.9　All charges and fees for a relevant service shall become due immediately upon termination of that service (save where the termination arises as a result of OCSL's breach) despite any other provision.

9.   Indemnities

9.1   The Customer shall indemnify and keep OCSL indemnified from and against any losses, damages, liability, costs (including legal fees) and expenses suffered or incurred by, awarded against or agreed to be paid by, OCSL as a result of or in connection with any action, demand or claim that the proper use or possession of any Customer Materials, infringes the IPRs of any third party.

9.2   The Customer shall indemnify and keep OCSL indemnified in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, OCSL and any Sub-Processor arising from or in connection with any:

    9.2.1   non-compliance by the Customer with the Data Protection Laws;

    9.2.2   processing carried out by OCSL or any Sub-Processor pursuant to any Customer instruction that infringes any Data Protection Law; or

    9.2.3   breach by the Customer of any of its obligations under clause 15.

9.3   The Customer shall indemnify and keep OCSL indemnified from and against any losses, damages, liability, costs (including legal fees) and expenses suffered or incurred by, awarded against or agreed to be paid by, OCSL as a result of or in connection with any breach of clause 13 hereof.

9.4   The indemnities in clauses 9.1 to 9.3 and all other indemnities in any Schedule are subject to the following conditions:

    9.4.1   the indemnified party promptly notifies the indemnifier in writing of the action or claim;

    9.4.2   the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;

    9.4.3   the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and

    9.4.4   the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

9.5   The indemnities in clauses 9.1 to 9.3 and all other indemnities in any Schedule may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

10.   Anti-Bribery

10.1   For the purposes of this clause 10 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

10.2   Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:

    10.2.1   all of that party's personnel;

10.2.2   all others associated with that party; and

10.2.3   all of that party's subcontractors;

involved in performing the Agreement so comply.

10.3   Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

10.4   Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 10.

11. Anti-Slavery

11.1   The Customer undertakes, warrants and represents that:

11.1.1   neither the Customer nor any of its officers, employees, agents or subcontractors has:

a.   committed an offence under the Modern Slavery Act 2015 (a MSA Offence);

b.   been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

c.   is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; and

11.1.2   it shall comply with the Modern Slavery Act 2015 and OCSL's anti-slavery and human trafficking policy in force and notified to the Customer from time to time.

11.2   Any breach of clause 11.1 by the Customer shall be deemed a material breach of the Agreement and shall entitle OCSL to terminate the Agreement with immediate effect.

12. Limitation of Liability

12.1   The extent of OCSL's Liability under or in connection with the Agreement shall be as set out in this clause 12.

12.2   Subject to clauses 12.3, 12.4 and 12.5, OCSL's total aggregate Liability shall not exceed the applicable financial limit for each category of liability set out below:

12.2.1   In respect of any indemnity, the obligations and payments set out therein;

12.2.2   In respect of a breach of clause 10 (Anti-Bribery) or clause 11 (Anti-Slavery), unlimited;

12.2.3   In respect of Liability arising out of or in connection with a Schedule (including, without limitation, a product or service supplied under that Schedule), the financial limit(s) set out in that Schedule;

12.2.4 In respect of all other Liability, howsoever arising (including, without limitation, where no financial limit is set out in a Schedule), the maximum of 125% of the fees paid or payable for the relevant product or service in respect of which a claim is made during the 12 months immediately preceding the act or omission giving rise to the Liability;

12.3 Subject to clauses 12.4 and 12.5, OCSL shall not be Liable for any of the following:

12.3.1 any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer;

12.3.2 any use of any service or product supplied by OCSL under this Agreement for any purpose for which the service or product is not designed;

12.3.3 any Data Protection Losses not directly resulting from OCSL's breach of clause 15;

12.3.4 any data Protection Losses to the extent that they are contributed to or caused by any breach of this Agreement by the Customer;

12.3.5 loss of actual or anticipated profits;

12.3.6 any damages relating to the procurement by the Customer of any substitute goods or services;

12.3.7 loss of business;

12.3.8 loss of revenue or the use of money;

12.3.9 loss of data (and/or undertaking the restoration of data or software restoration);

12.3.10 loss of use;

12.3.11 loss of production;

12.3.12 loss of contracts;

12.3.13 loss of opportunity;

12.3.14 loss of savings, discount or rebate (whether actual or anticipated);

12.3.15 harm to reputation or loss of goodwill;

12.3.16 any special, indirect or consequential loss;

And such Liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, clauses 12.3.1 to 12.3.15 above shall apply whether such damage or loss is direct, indirect, consequential or otherwise.

12.4 Notwithstanding any other provision of this Agreement, the Liability of the parties shall not be excluded or limited in any way in respect of the following:

12.4.1 death or personal injury caused by negligence (as such term is defined in the Unfair Contract Terms Act 1977);

12.4.2 fraud or fraudulent misrepresentation;

12.4.3 any breach of undertaking as to title, quiet possession and freedom of encumbrance implied by law;

12.4.4 any other losses which cannot be excluded or limited by Applicable Law.

12.5 OCSL does not exclude, but does limit in accordance with clause 12.2, Liability for any fundamental misrepresentation including a misrepresentation as to a matter fundamental to its ability to perform its obligations under this Agreement.

13. Confidential Information

13.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall:

13.1.1 not use or exploit the Confidential Information in any way except for the purpose of complying with its obligations under this Agreement;

13.1.2 not directly or indirectly disclose or make the Confidential Information available in whole or in part to any third party, except as expressly permitted by this Agreement;

13.1.3 not copy, scan, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the purpose of complying with its obligations under this Agreement (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);

13.1.4 apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use;

13.2 The Recipient may disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know this Confidential Information for the purpose of enabling the Recipient to comply with its obligations under this Agreement, provided that:

13.2.1 it informs its Representatives of the confidential nature of the Confidential Information before disclosure;

13.2.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with this agreement as if they were the Recipient and, if the Disclosing Party so requests, procure that any relevant Representative enters into a confidentiality agreement with the Disclosing Party on terms equivalent to those contained in this agreement; and

13.2.3 it keeps a written record of these Representatives,

and it shall at all times:

13.2.4 Take all necessary precautions to ensure that the provisions of this clause 13 are enforced; and

13.2.5 be liable for the failure of any Representative to comply with the terms of this agreement and for the actions or omissions of the Representative as if they were the failure, actions or omissions of the Recipient.

13.3 The Recipient may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this

clause 13.3, it takes into account the reasonable requests of the Disclosing Party in relation to the content of this disclosure.

13.4 Unless expressly provided by this Agreement, all Confidential Information shall remain the property of the Disclosing Party.

13.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

13.6 This clause 13 shall survive termination of this Agreement, however arising.

14. Intellectual Property Rights

14.1 Except as expressly stated in this clause or in a Schedule hereto no IPRs of either party are transferred or licensed as a result of this Agreement.

14.2 All Background IPRs and IPRs in any products, services and deliverables shall belong to and vest in OCSL or its licensors.

14.3 Without limitation to clause 14.2:

    14.3.1 OCSL grants the Customer a non-exclusive, non-transferable and royalty-free licence to use for its own benefit and to use in the Customer's business to enable the Customer to service its own customers:

        a.   Background IPRs; and

        b.   IPRs in all materials connected with any services or deliverables and in any material developed or produced in connection with this Agreement by OCSL, its officers, employees, subcontractors or agents;

    to the extent necessary to enable the Customer to make use of any products, services or deliverables and otherwise perform its obligations under this Agreement;

    14.3.2 the Customer grants OCSL a non-exclusive, non-transferable and royalty-free licence to use the Customer Materials (and to permit any OCSL subcontractor to use the same subject to the same restrictions as under this Agreement) to the extent necessary to enable OCSL to provide any products, services, and/or deliverables and otherwise perform its obligations under this Agreement.

14.4 The Customer shall execute such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this clause 14.

15. Data Protection

15.1 The parties agree that, for the Protected Data, the Customer shall be the Data Controller and OCSL shall be the Data Processor.

15.2 OCSL shall (and shall procure that any personnel involved in the provision of the Agreement) comply with any notification requirements under the Data Protection Laws and other relevant legislation.

15.3   Both parties will duly observe all their obligations under the Data Protection Laws and other relevant legislation, which arise in connection with the Agreement.

15.4   The Customer warrants, represents and undertakes, that:

15.4.1   all data sourced by the Customer for use in connection with this Agreement, prior to such data being provided to or accessed by OCSL for the performance of its obligations under this Agreement, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;

15.4.2   all instructions given by it to OCSL in respect of Personal Data shall at all times be in accordance with Data Protection Laws;

15.4.3   it is satisfied that:

a.   OCSL's processing operations are suitable for the purposes for which the Customer proposes to use services under this Agreement and engage OCSL to process the Protected Data; and

b.   OCSL has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws.

15.5   OCSL may appoint a Sub-Processor to process any Protected Data processed by OCSL in connection with this Agreement and shall procure that any Sub-Processor is made subject to substantially the same obligations in relation to such Protected Data as are contained in this clause 15. For the purposes of this clause 15.5, any of OCSL's Group Companies may be a Sub-Processor. The names of any other Sub-Processor shall be available upon written request by the Customer (the release of such information may be subject to such reasonable security requirements as OCSL shall impose).

15.6   Without prejudice to the generality of clause 15.1, in respect of Protected Data disclosed to OCSL in connection with this Agreement (and whether disclosed by the Customer, data subjects or otherwise), OCSL shall ensure that it:

15.6.1   complies fully with the data protection principles in processing the Protected Data;

15.6.2   only processes the Protected Data for purposes notified to it by the Customer and/or the relevant Data Subjects and in accordance with the Customer's instructions;

15.6.3   if Applicable Law requires it to process Protected Data other than in accordance with the Customer's instructions, shall notify the Customer of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest);

15.6.4   shall use reasonable endeavours to consult the Customer before making any disclosure of Protected Data required by Applicable Law or by a law enforcement authority (unless notification or consultation is forbidden by Applicable Law);

15.6.5   shall deal promptly and properly with all enquiries from the Customer relating to the processing of the Protected Data and promptly comply with any request from Customer requiring OCSL to amend, transfer, delete or return the Protected Data and, if requested, to certify that this has been done;

15.6.6 shall not and will procure that any Sub-Processor shall not transfer the Protected Data (nor any part thereof) outside the European Economic Area without the prior written consent of the Customer; and

15.6.7 maintains appropriate technical and organisational measures (including but not limited to, appropriate policies communicated to employees, management and review of ongoing compliance and effective security measures):

a. to prevent any unauthorised or unlawful processing of the Protected Data; and

b. to guard against accidental loss or destruction of, or damage to, the Protected Data.

15.7 From the GDPR Date:

15.7.1 OCSL shall maintain, in accordance with Data Protection Laws binding on OCSL, written records of all categories of processing activities carried out on behalf of the Customer;

15.7.2 OCSL shall and use reasonable endeavours to procure that its Sub-Processors, in accordance with Data Protection Laws, make available to the Customer such information as is reasonably necessary to demonstrate OCSL's compliance with the obligations of Data Processors under Data Protection Laws, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose, subject to the Customer:

a. giving OCSL reasonable prior notice of such information request, audit and/or inspection being required by the Customer;

b. ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);

c. ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to OCSL's business, the Sub-Processors' business and the business of other customers of OCSL; and

d. paying OCSL's (or the Sub-Processor's as the case may be) reasonable charges for assisting with the provision of information and allowing for and contributing to inspections and audits, such charges to be calculated on a time and materials basis at OCSL's (or the Sub-Processor's as the case may be) standard rates at the time.

15.7.3 OCSL shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to OCSL) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:

a. security of processing;

b. data protection impact assessments (as such term is defined in Data Protection Laws);

c. prior consultation with a Supervisory Authority regarding high risk processing; and

       d. notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach,

provided the Customer shall pay OCSL's reasonable charges for providing the assistance in this clause 15.7.3, such charges to be calculated on a time and materials basis at OCSL's standard rates at the time.

15.7.4   the technical and organisational measures at clause 15.6.7 shall take into account the nature of the processing, to assist the Customer insofar as is possible in the fulfilment of the Customer's obligations to respond to Data Subject Requests relating to Protected Data

15.7.5   OCSL shall inform the Customer if OCSL becomes aware of a Customer instruction that, in OCSL's opinion, infringes Data Protection Laws, provided that:

       a. this shall be without prejudice to clauses 15.3 and 15.4;

       b. to the maximum extent permitted by mandatory law, OCSL shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Customer's instructions following the Customer's receipt of that information;

15.8   Each of the Customer and OCSL shall notify the other:

15.8.1   without undue delay and, in any event, not later than 72 hours after becoming aware of any unauthorised, unlawful or dishonest conduct or activities, any Personal Data Breach or any breach of the terms of this Agreement relating to Protected Data of which it becomes aware together with such information as may be required for OCSL or the Customer (as the case may be) to report the breach to the Supervisory Authority;

15.8.2   without undue delay of any complaint, notice or communication which relates directly or indirectly to the processing of the Protected Data or to either party's compliance with the Data Protection Act in relation to the Services;

15.8.3   without undue delay of any request for disclosure of the Protected Data by a law enforcement authority (unless such notification is forbidden by Applicable Law); and

15.8.4   within 3 (three) Business Days of any Data Subject Request;

For the purpose of this clause 15.8, a notice may be given by e-mail to the e-mail address specified in clause 26 below and, if none is specified, to a mutually agreed email address.

15.9   OCSL will reject any requests for disclosure of Protected Data that it is not bound to fulfil by law. OCSL will use reasonable endeavours to redirect any valid request to the Customer.

15.10 OCSL shall, at the Customer's written request, either delete or return all the Protected Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:

15.10.1   the end of the provision of the relevant services related to processing; or

15.10.2   once processing by OCSL of any Protected Data is no longer required for the purpose of OCSL's performance of its relevant obligations under this Agreement,

and delete existing copies (unless storage of any data is required by Applicable Law and, if so, OCSL shall inform the Customer of any such requirement).

15.11 Any notice or request by the Customer pursuant to this clause 15 shall be directed in accordance with clause 26 below.

16. Force Majeure

16.1 Neither party shall have any liability to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control including, without limitation:

16.1.1 strikes, lock-outs or other industrial disputes (whether involving the workforce of OCSL or any other party);

16.1.2 failure of a utility service or transport or telecommunications network;

16.1.3 act of God, war, riot, civil commotion;

16.1.4 malicious damage;

16.1.5 compliance with any law or governmental order, rule, regulation or direction;

16.1.6 accident;

16.1.7 breakdown of plant or machinery;

16.1.8 fire;

16.1.9 flood;

16.1.10 storm; or

16.1.11 default of suppliers or sub-contractors;

PROVIDED THAT the other party is notified of such an event and its expected duration and takes all reasonable steps to resume performance of its obligations.

16.2 Sub-clause 16.1.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.

16.3 If and when the period of such incapacity exceeds 60 days then either party will be entitled to terminate this Agreement (or the relevant Schedule affected) by notice in writing.

17. Termination

17.1 Either party may terminate the Agreement at any time by giving notice in writing to the other if:

17.1.1 the other party commits a material breach of the Agreement and such breach is not remediable; or

17.1.2 the other party commits a material breach of the Agreement which is not remedied within 30 days of receiving written notice of such breach;

17.2 Without prejudice to any other right that OCSL may have to suspend performance of its obligations, OCSL may terminate the Agreement at any time by giving notice in writing to the Customer if:

17.2.1   the Customer has failed to pay any amount due under the Agreement on the due date and such amount remains unpaid within 30 days after OCSL has given notification that the payment is overdue; or

17.2.2   any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Agreement or the Schedule or receive any benefit to which it is entitled;

17.2.3   the Customer breaches clauses 4, 5, 8, 10, 11 or 13;

17.3   OCSL may terminate the Agreement at any time by giving notice in writing to the Customer if the Customer:

17.3.1   stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

17.3.2   is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if OCSL reasonably believes that to be the case;

17.3.3   becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

17.3.4   has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

17.3.5   has a resolution passed for its winding up;

17.3.6   has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;

17.3.7   is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;

17.3.8   has a freezing order made against it;

17.3.9   is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;

17.3.10   is subject to any events or circumstances analogous to those in clauses 17.3.1 to 17.3.9 in any jurisdiction;

17.3.11   takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 17.3.1 to 17.3.10 above including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

17.4 OCSL may terminate the Agreement at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control.

17.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle OCSL to terminate the Agreement under this clause 17, it shall immediately notify OCSL in writing.

17.6 The termination rights set out herein shall be in addition to any rights to terminate the Agreement or part thereof as may be set out in that Schedule.

17.7 For the avoidance of doubt, the termination of this Agreement shall not cause the termination of any other separate agreement between OCSL and the Customer even if that agreement is made on the same terms as those contained herein (including, but without limitation, a separate agreement pursuant to clause 2 above to which another Schedule applies).

17.8 The following shall not be affected or prejudiced by termination, howsoever arising:

17.8.1 The accrued rights and liabilities of the parties as at termination;

17.8.2 The continuation of any provision implicitly surviving termination;

17.8.3 Clauses 1, 4, 8, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 28, 29.

18. Assignment and Delegation

18.1 OCSL may not assign this Agreement, in whole or in part, without the Customer's prior written consent (such consent not to be unreasonably withheld or delayed) unless such assignment is to one of OCSL's Group Companies.

18.2 OCSL may subcontract any of its obligations or responsibilities under this Agreement. Performance by such subcontractors shall be deemed to be performance by OCSL.

18.3 The Customer may not assign, subcontract or encumber any right or obligation under the Agreement, in whole or in part, without OCSL's prior written consent (such consent not to be unreasonably withheld or delayed).

19. Severance

19.1 If at any time any one or more clause, sub-clause, paragraph, subparagraph or any other part of this Agreement is held to be, or becomes, void or otherwise unenforceable for any reason under any Applicable Law the same shall be deemed omitted and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

19.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted or modified, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and to give effect to the commercial intention of the parties.

20. Waiver

20.1 No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right.

20.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. No waiver by either party of any breach of this Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

21. Variation

21.1 No Variation to this Agreement shall be of any effect unless there is agreement between the parties and the Variation is made in writing and signed by both parties.

21.2 If either party wishes to Vary any product or service provided under this Agreement it shall submit details of the requested change to the other in writing.

21.3 If the Customer requests a Variation, OCSL shall (if in the normal course of its business it is able to implement the change), within a reasonable time, provide a written estimate to the Customer of:

21.3.1 the likely time required to implement the Variation;

21.3.2 any variations to the Charges arising from the Variation; and

21.3.3 any other impact of the change on the terms of this Agreement.

21.4 If OCSL requests a Variation:

21.4.1 the Customer shall not unreasonably withhold or delay consent to it provided always that such change does not require any other changes to the terms and conditions of this Agreement; or adversely affect the provision of any services or products; or reduce the specification, capability, functionality or performance of the products or services; or increase any fees payable hereunder.

21.4.2 the Customer shall not unreasonably withhold, delay or condition its agreement to any Variation requested by OCSL in order to ensure the OCSL (and each Sub-Processor) can comply with Data Protection Laws.

22. Set-Off

22.1 Neither OCSL nor the Customer is entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

23. Non-Solicitation

23.1 The Customer undertakes that it will not during or for a period of 12 months after the termination of this Agreement solicit or entice away or endeavour to solicit or entice away from OCSL any employee, contractor, agent or consultant who has worked under this Agreement without the written consent of OCSL.

23.2 Notwithstanding clause 23.1, the Customer may employ or engage any person mentioned therein who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by the other party or via an advertisement placed publicly by the other party (either in the press, social media, online or in trade and industry publications).

24. Dispute Resolution

24.1 If there is a disagreement in relation to this Agreement, either party may invoke the dispute resolution procedure by referring the matter to the director of the relevant business unit (or their appointed delegate) who shall meet or participate in a conference call to try to resolve the matter. If the matter is not resolved at that level within twenty (20) Business Days of the authorised representatives having met or participated in a conference call, then the matter shall be referred by either party to the Managing Directors (or equivalent level personnel) of the parties (or their appointed delegate) who shall meet to try and resolve the matter within 20 Business Days of referral. If any such meeting fails to result in a settlement within twenty (20) Business Days of the meeting (or if both parties are unable to attend a meeting within such period), then the matter may be referred to the courts.

24.2 The parties shall not refer any dispute to the courts unless and until the dispute resolution procedures of this clause 24 have been followed and the deadline for settlement under clause 24 has expired save where it is necessary to do so for the purposes of applying for interim relief.

24.3 For the avoidance of doubt, the parties' obligations under this Agreement shall not be affected as a result of any matter being dealt with under the dispute resolution procedure set out in this clause 24.

24.4 Nothing in this clause 24 shall prevent either party applying to the courts for injunctive or other interim relief.

25. Entire Agreement

25.1 This Agreement, and any documents referred to in it, constitutes the entire agreement and understanding between the parties and supersedes any previous or contemporaneous agreement or understanding between them relating to the subject matter hereof. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

25.2 The Customer acknowledges and agrees that no representations were made prior to entry into this Agreement.

25.3 Notwithstanding the same, if any such representations are found to have been made (and subject to clauses 12.4 and 12.5), the Customer does not rely on, and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person unless such representation is expressly agreed in writing and signed by an authorized representative of OCSL.

26. Notices

26.1 A notice required or permitted to be given by either party to the other under this Agreement shall be in writing, delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party and addressed:

26.2 In the case of the Customer to its registered office or principal place of business;

26.3 In the case of OCSL, notices should be addressed as follows:

> Legal Department
>
> OCSL
>
> East House
>
> Newpound Common
>
> Wisborough Green
>
> West Sussex
>
> RH14 0AZ
>
> Where a notice is permitted by e-mail: Satinder.tamber@ocsl.co.uk

or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

26.4 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

27. Third Party Rights

27.1 Except as provided for in clause 27.2 below, this Agreement does not confer any rights on any person or party (other than the parties to this Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

27.2 Any Group Company of OCSL shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Agreement. The consent of any such Group Company is not required in order to rescind, waive, settle or vary this Agreement or any provisions of it.

28. No Partnership or Agency

28.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

29. Governing Law and Jurisdiction

29.1 This Agreement and any other contract between the parties to which this Agreement relates and any other dispute or claim arising out of each of them shall be governed by and construed exclusively in accordance with the laws of England and Wales.

29.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

29.3 OCSL may issue proceedings (whether concurrently or not with proceedings referred to in clause 29.2) against the Customer in the location to which any goods are to be delivered to the extent permitted by the law applicable in that jurisdiction.

29.4 To the extent permitted by law:

29.4.1 the Convention on the International Sale of Goods 1980 and all international and domestic legislative (or other) implementations of that Convention; and

29.4.2 the Uniform Laws on International Sales Act 1967,

will not apply in relation to this Agreement

Managed Services Schedule

Version: 2.3b

1.   Definitions and Interpretation

1.1   The following are the additional terms and conditions under which, together with the Agreement, OCSL provides managed services, cloud-based services and other, related services. This Schedule shall, unless otherwise expressly stated in writing, apply to the subject matter of any agreement in respect thereof.

1.2   In this Schedule the following words and phrases shall, unless the context otherwise requires, have the following meanings:

"Appendice(s)"	means any of the appendices attached hereto and/or listed at paragraph 2.2 below. "Appendix" shall be construed accordingly;
"Bill of Materials"	means the Appendix attached hereto and named as such;
"CloudControl"	Means a software-as-a-service provided by OCSL which enables the Customer to amend the Services or purchase additional services. The CloudControl software is provided under the EULA presented to the Customer through CloudControl from time to time;
"Data Centre"	Means one of OCSL's data centres located in Huntingdon or Northampton or such locations within the United Kingdom as OCSL shall specify in writing from time to time;
"Effective Date"	Means the date that the Transition Services are complete;
"EULA"	Means end user licence agreement;
"Fees"	mean the amounts and rates charged for the Services as defined in the Appendice(s) and set out in the Bill of Materials;
"Inappropriate Content"	means Viruses, or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
"Initial Period"	a period of 3 years commencing on the Effective Date;
"Limited Microsoft Warranty"	Shall have the meaning given to it in paragraph 5.2;
"Microsoft Products"	Microsoft software, which may include associated software, media, printed materials, and "online" or electronic documentation (individually and collectively);
"Microsoft Remedies"	Shall have the meaning given to it in paragraph 5.3;
"Normal Business Hours"	9.00 am to 5.00 pm local UK time, each Business Day;
"OCSL"	Means OCSL Managed Services Limited a company incorporated under the laws of England and Wales (registered number 04434288) of East House, Newpound Common, Wisborough Green, West Sussex RH14 0AZ
"Public Cloud Service"	Means a cloud service generally available to the public such as but not limited to: Microsoft Azure;

"Renewal Period"	each successive 12-month period after the Initial Period for which this Schedule is renewed;
"Request"	Shall have the meaning set out in paragraph 8.1 below;
"RPI"	the Retail Price Index (All Items) calculated by the Office of National Statistics for the period from the Effective Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect (in the case of the second or any subsequent increase) up to the date of the notice of variation detailed in paragraph 6.5;
"Services"	In the context of this Schedule means the relevant services as detailed in an attached Appendix and 'Service' means the relevant service to which the context relates;
"Service Credit"	means the sole remedy available to the Customer as detailed in the Service Levels and Service Credits Appendix;
"Specified Change"	Means a change in the quantity, specification or type of Services provided under an Appendix; or the addition of new services from OCSL's service catalogue;
"SPLA"	means the Services Provider License Agreement entered into between Microsoft and OCSL (or an affiliate of OCSL) from time to time which permits OCSL to provide access to Microsoft Products as part of the Services;
"Term"	Term: the Initial Period and any Renewal Periods;
"Transition Services"	Means the process of transition and migration from the Customer's existing IT systems to the Services;
"Virus"	anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.3 Any definitions within this Schedule shall apply to this Schedule alone;

1.4 The definitions and rules of interpretations set out in paragraph 1 of this Schedule shall be supplemented by the definitions and rules of interpretation set out in clause 1 of the Agreement;

1.5 Unless the context requires otherwise, reference to a 'clause' shall be reference to a provision of the Agreement (not including Schedules) and reference to a 'paragraph' shall be a reference to this Schedule;

1.6 Save for the reference in paragraph 1.7 below, any reference to this Schedule shall be taken to include reference to any schedules attached to this schedule, appendices and annexes (if any);

1.7   In the event of a conflict between the paragraphs contained in this Schedule and the terms of the any other document referred to herein (including the Appendices), the conflict shall be resolved in the following order of precedence:

    1.7.1   This Schedule;

    1.7.2   Service Levels and Service Credits Appendix;

    1.7.3   Any other Appendix listed in paragraphs 2.2.1 to 2.2.15 below;

2.   OCSL Obligations

2.1   OCSL shall perform the Services in accordance with the Appendices.

2.2   The following Appendices are attached and form part of this Schedule:

    2.2.1   Virtual Machines Appendix;

    2.2.2   Storage Appendix;

    2.2.3   Backup Appendix;

    2.2.4   Internet Appendix;

    2.2.5   Colocation Appendix;

    2.2.6   Firewall Appendix;

    2.2.7   Hardware Firewall Appendix;

    2.2.8   Service Management Appendix;

    2.2.9   Networking Appendix;

    2.2.10   N3 Appendix;

    2.2.11   HSCN Appendix;

    2.2.12   Service Levels and Service Credits Appendix;

    2.2.13   Disaster Recovery Appendix;

    2.2.14   Bill of Materials;

    2.2.15   End User Licence Appendix;

2.3   Any Transition Services (as may be specified in a transition plan and/or statement of work) shall be subject to the terms of the Goods and Services Schedule and not this Managed Services Schedule.

3.   Customer Obligations

3.1   The Customer shall:

    3.1.1   provide OCSL with all necessary co-operation in relation to this Agreement and all necessary access to such premises and information as may be required by OCSL in order to perform the Service(s) including, but not limited to:

3.1.1.1 security access information;

3.1.1.2 Customer Data;

3.1.1.3 software interfaces to the Customer's business applications.

3.1.2   not do any act that shall infringe the rights of any third party including the publishing or transmission of any Inappropriate Content or other materials contrary to relevant laws;

3.1.3   not store, distribute or transmit any material, including any Inappropriate Content that:

3.1.3.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;

3.1.3.2 facilitates illegal activity;

3.1.3.3 depicts sexually explicit images; and/or

3.1.3.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities.

3.1.4   not cause or permit the storage, distribution or transmission of any Viruses, or any Inappropriate Content through the Service.

3.1.5   not access all or any part of a Service in order to build a product or service which competes with the Services;

3.1.6   not resell a Service, except as expressly permitted in writing by OCSL;

3.1.7   use reasonable endeavours to prevent any unauthorised access to or use of a Service;

3.1.8   promptly inform OCSL if it suspects or uncovers any breach of security or unauthorised use of a Service, and shall use all commercially reasonable endeavours to promptly remedy such breach;

3.1.9   agree to be bound by (and ensure that all individuals who have access to software are aware of and agree to be bound by) any end user licence agreement imposed upon the Customer by any third-party provider of software to OCSL for the provision of the Services including, without limitation: Microsoft Products; the terms imposed by: the End User Licence Appendix; the owner or licensor of any operating system installed on a virtual machine; the owner or licensor or any antivirus products installed on a virtual machine.

3.1.10   not reverse engineer, decompile or disassemble any third party software including, without limitation, Microsoft Products;

3.1.11   not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on third party software including, without limitation, Microsoft Products;

3.1.12   not use Microsoft Products in any application or situation where the Microsoft Product(s) failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage;

4.   Customer Acknowledgments

4.1   Where any Appendix describes a service as 'multi-tenanted', the Customer agrees and acknowledges that any particular piece of hardware, software, cabling or other piece of equipment used to deliver the Service is not (unless otherwise expressly stated) for the Customer's sole or dedicated use. The Customer accepts and agrees that there are risks inherent when a Service is delivered on a multi-tenanted platform and have chosen this approach to meet requirements, as opposed to deploying dedicated infrastructure.

4.2   This Agreement shall not prevent OCSL from entering into similar Agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.

4.3   The Customer shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

4.4   The Customer's license to use any third party software is (unless the terms of any end user licence agreement provide otherwise) a non-perpetual, non-exclusive, terminable, non-transferable, worldwide and limited right to access the software on the terms set out herein and in the end user licence agreement.

4.5   Where the Customer is required to sign up to one or more end user licence agreement in accordance with paragraph 3.1.9 above, such licence agreement and paragraphs 3.1.9 to 3.1.12 shall (notwithstanding the Third Party Rights in the Agreement) be enforceable by the software licensor.

5.   OCSL Warranties

5.1   Where OCSL supplies any goods manufactured or software licensed by a third party in connection with the provision of the Services, OCSL does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person supplying the goods. Subject to paragraphs 5.2 to 5.5 below such assignment (if any) be the only warranty given to the Customer, unless otherwise agreed in writing.

5.2   The Customer acknowledges that Microsoft provides OCSL with limited warranties under the SPLA, namely that Microsoft Products will perform substantially as described in the applicable Microsoft Product documentation for a period of one year from the date that OCSL is first licensed for that version ("the Limited Microsoft Warranty"). The Limited Microsoft Warranty is subject to the following limitations:

5.2.1   the Limited Microsoft Warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or inconsistent with any end user licence agreement;

5.2.2   the Limited Microsoft Warranty does not apply to components of Microsoft Products that OCSL is permitted to redistribute;

5.2.3   the Limited Microsoft Warranty does not apply to free, trial, pre-release, or beta products; and

5.2.4   the Limited Microsoft Warranty does not apply to problems caused by the failure to meet minimum system requirements.

5.3   If Microsoft fails to meet the Limited Microsoft Warranty set out above and upon being notified within the warranty term, Microsoft has agreed at its option, to either: (1) return the price paid; or (2) repair or replace the Microsoft Products ("Microsoft Remedies").

5.4   OCSL will use its reasonable endeavours to notify Microsoft within the warranty term to enable Microsoft to effect the Microsoft Remedies. OCSL will allow Microsoft to repair or replace the Microsoft Product or will pay to the Customer the price returned by Microsoft (or such proportion of the price as relates to the Microsoft Product(s) purchased by the Customer).

5.5   Paragraph 5.4 above sets out OCSL's sole obligation (and the Customer's sole remedy) for a failure of the Microsoft Products to conform to the Limited Microsoft Warranty.

5.6   Save as set out in paragraphs 5.2 to 5.5 above, OCSL provides no other express or implied warranties or conditions in relation to the Microsoft Products. OCSL disclaims any implied representations, warranties, or conditions, including warranties of merchantability, fitness for a particular purpose, satisfactory quality, title or non-infringement in relation to the Microsoft Products.

6.   Charges and Payment

6.1   Subject to paragraph 7 below, the Customer shall pay the Fees for the Services as set out in the Bill of Materials.

6.2   The Customer shall pay OCSL any additional sums for:

6.2.1   The licensing of Microsoft Products under the SPLA;

6.2.2   the provision of any additional Services or other services which are agreed between OCSL and the Customer (including under paragraphs 7 and 8 below);

6.2.3   The additional sums set out in paragraph 11.2.3;

6.3   The Customer shall, in all circumstances and notwithstanding the Customer's ability to decrease the Services through CloudControl or to request a Specified Change, be obliged to pay to OCSL a minimum fee equivalent to 90% (ninety percent) of:

6.3.1   (In the first year following the Effective Date) the Fees listed in the Bill of Materials at the date this Agreement was originally entered into

6.3.2   (In any subsequent year) the actual Fees paid or payable by the Customer in the preceding 12 (twelve) months

6.4   OCSL may by notice in writing vary the Fees for any Service once in each 12-month period commencing on the first anniversary of the Effective Date and every anniversary thereafter.

6.5   The Customer may terminate the relevant Service from the date on which a variation under paragraph 6.3 is intended to take effect, if:

6.5.1   the increase in Fees is greater than RPI + 5%; and

6.5.2   the Customer gives OCSL written notice of termination of that Service within 60 days of the date of OCSL's notice.

6.6   Notwithstanding paragraph 6.5, OCSL shall be entitled at any time to pass onto the Customer, increments in Fees for the Services incurred from third party providers such as but not limited to: licence providers (for example licensing of Microsoft Products under the SPLA).

7.   CloudControl

7.1   The Customer shall have the option of using (but shall not be bound to use) OCSL's CloudControl software as a service to change, increase or decrease the Services provided under this Agreement or to purchase additional Services. The exact functionality of CloudControl will be further described in any documentation provided to the Customer by OCSL through the CloudControl software.

7.2   The terms upon which the Customer accesses the CloudControl software shall be set out in a click-through licence presented to the Customer prior to access.

7.3   Any amendment to the Services as described in paragraph 7.1 above shall be subject to this Agreement, this Managed Services Schedule and the relevant Appendices.

7.4   Subject to paragraph 7.6, additional services (which are not the subject of an Appendix attached hereto) shall be subject to the terms of the relevant additional Appendix, which shall be available from OCSL upon written request. Upon acceptance of such additional services, the relevant Appendix shall be deemed to be attached to and incorporated into this Agreement and the definition of Services shall be amended accordingly.

7.5   Where the additional services purchased comprise of a third-party Public Cloud Service, the terms upon which OCSL re-sells that Public Cloud Service shall be set out in a separate contract which shall be provided to the Customer upon written request.

7.6   An increase, decrease or change in the Services provided may cause a corresponding alteration to the Fees payable under this Managed Services Schedule. Such amended Fees for that Service shall be displayed by CloudControl before the user accepts the increase, decrease or change. Subject to paragraph 6.6 above, the relevant part of the Fees payable hereunder shall be amended from the date that the user accepts the displayed amendment.

8.   Change Management

8.1   Where the Customer wishes to make a Specified Change, it shall notify OCSL of its intention to do the same by contacting OCSL's service desk (in the manner notified to the Customer by OCSL from time to time) or, if applicable, OCSL's service delivery manager ("Request").

8.2   OCSL shall determine, in its sole discretion: (i) whether a Request is a Specified Change and; (ii) if so, whether it is able to implement that Specified Change as set out in clause 20 of the Agreement. For the avoidance of doubt, any change that requires an amendment to the paragraphs in this Managed Services Schedule or the clauses of the Agreement must be effected by a written, signed variation.

8.3 If OCSL determines that the Request is a Specified Change and that it is able to implement the Specified Change without a written, signed variation as set out in paragraph 8.2 above, OCSL will either:

8.3.1 update the Bill of Materials; or

8.3.2 Send a quotation to the Customer;

and may supply additional Appendices applicable to any services requested as part of that Specified Change.

8.4 Upon the sooner of: (i) the date of implementation of the Specified Change; and (ii) the raising of a purchase order by the Customer; the additional Appendices (if any) and the Revised Bill of Materials (or the quotation as the case may be) shall be deemed to be attached to and incorporated into this Agreement and the definition of Services shall be amended accordingly.

8.5 Where the additional services purchased comprise of a third-party Public Cloud Service, the terms upon which OCSL re-sells that Public Cloud Service shall be set out in a separate contract which shall be provided to the Customer upon written request.

9. Indemnities

9.1 The Customer shall indemnify OCSL against all damages, losses and expenses arising as a result of any action or claim that the Customer Data or any other material stored or handled by OCSL for the Customer under this Schedule constitutes Inappropriate Content.

9.2 The Customer shall indemnify OCSL against all damages, losses and expenses arising as a result of any action or claim arising from a breach of the SPLA (or penalty payment levied thereunder) which is caused by any act or omission of the Customer.

9.3 The indemnity in paragraph 9.1 is subject to the Indemnity Conditions in the Agreement.
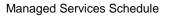
10. Limitation of Liability

10.1 For the purposes of the Liability Provisions in the Agreement OCSL's total Liability arising out of or in connection with this Schedule (including, without limitation, a product or service supplied under this Schedule) shall not exceed the following financial limits:

10.1.1 Subject to 10.1.2, in respect of Liability for loss or damage arising out of or in connection with any services (including, without limitation, the Services and any obligations contained in an Appendix), the limit prescribed in clause 12.2.4 of the Liability Provisions;

10.1.2 In respect of Liability for loss or damage arising out of or in connection with the operation of Microsoft Products, in respect of each Microsoft Product the amount the Customer was required to pay for that Microsoft Product under the SPLA;

10.1.3 In respect of Liability for loss or damage arising out of or in connection with the operation of any third-party software, such limit of liability as may be agreed between OCSL and the licensor of that third-party software;

10.2 Subject to the Liability Provisions in the Agreement, OCSL shall have no Liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Customer Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.

10.3 Service Credits shall be the Customer's sole and exclusive right and remedy, and OCSL's only obligation and liability in respect of the provision of any Services (or the lack of provision or unavailability thereof).

10.4 For the avoidance of doubt, the Liability Provisions in the Agreement shall apply to this Schedule as if specifically incorporated herein save that:

10.4.1   where the Customer has purchased backup-as-a-service, the terms of the Backup Appendix shall apply to the backup and restoration of data as set out therein. Clause 11.3.7 of the Liability Provisions in the Agreement shall not apply to the extent that such loss is directly attributable to a breach of the Backup Appendix by OCSL.

11. Term and Termination

11.1 The provision of Services under this Agreement shall commence on the Effective Date and shall remain in force, unless terminated earlier in accordance with the Termination Provisions in the Agreement, for the Initial Period. The Term shall automatically be extended for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period, unless a party gives written notice to the other party, not later than 60 days before the end of the Initial Period or the relevant Renewal Period, to terminate this Agreement.

11.2 On termination of this Agreement for any reason and unless otherwise agreed in writing:

11.2.1   all licences (including, without limitation, third party software licences) granted under this Agreement shall immediately terminate;

11.2.2   each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and

11.2.3   OCSL may destroy or otherwise dispose of any of the Customer Data in its possession unless OCSL receives, no later than 20 days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of any such Customer Data. OCSL shall use reasonable commercial endeavours to deliver such Customer Data to the Customer, in the format in which it is stored, within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). On receipt of the Customer Data, Customer will have 20 days to restore and verify the data on a new environment. A further 20 day period for data restore and verification may be granted by OCSL if the backup provided by OCSL was proved to be incorrect. The Customer shall pay all reasonable expenses incurred by OCSL in returning or disposing of Customer Data;

11.3 The following shall not be affected or prejudiced by termination, howsoever arising:

11.3.1   any provision of this Schedule implicitly surviving termination;

11.3.2   paragraphs 1, 6, 7 and 10;

11.3.3   Any other agreement between OCSL and the Customer.

Bill of Materials Appendix

End User Licence Appendix

END USER LICENSE TERMS

TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated software, media, printed materials, and "online" or electronic documentation (individually and collectively, "Products") provided by Organised Computer Systems Limited (hereinafter referred to as "Customer"). Customer does not own the Products and the use thereof is subject to certain rights and limitations of which Customer must inform you. Your right to use the Products is subject to the terms of your agreement with Customer, and to your understanding of, compliance with, and consent to the following terms and conditions, which Customer does not have authority to vary, alter, or amend.

1. **DEFINITIONS.**

   "Client Software" means software that is installed on a Device that allows the Device to access or utilize the Products.

   "Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or any other hardware where software can be installed that would allow End User to interact with the Product.

   "End User" means an individual or legal entity that obtains Software Services directly from Customer, or indirectly through a Software Services Reseller.
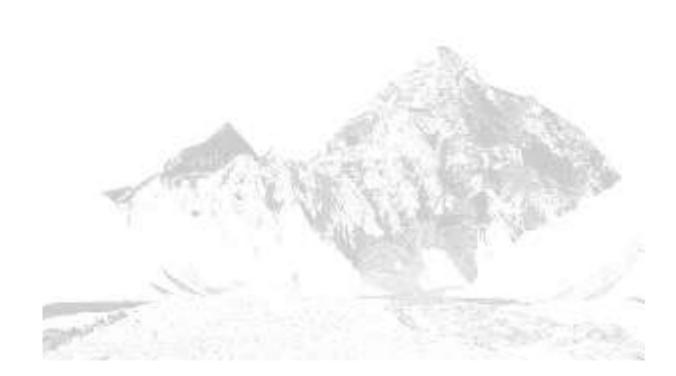
   "Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

   "Software Services" means services that Customer provides to you that make available, display, run, access, or otherwise interact, directly or indirectly, with the Products. Customer must provide these services from data center(s) through the Internet, a telephone network or a private network, on a rental, subscription or services basis, whether or not Customer receives a fee. Software Services exclude any services involving installation of a Product directly on any End User device to permit an End User to interact with the Product.

2. **OWNERSHIP OF PRODUCTS.** The Products are licensed to Customer from an affiliate of the Microsoft Corporation (collectively "Microsoft"). Microsoft Products are protected by copyright and other intellectual property rights. Products and other Product elements including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Products are owned by Microsoft or its suppliers. You may not remove, modify or obscure any copyright trademark or other proprietary rights notices that are contained in or on the Products. The Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Products does not transfer any ownership of the Products or any intellectual property rights to you.

3. **USE OF CLIENT SOFTWARE.** You may use the Client Software installed on your Devices only in accordance with your agreement with Customer and the terms under this document, and only in connection with the Software Services, provided to you by Customer. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during the installation and/or use of the Client Software.

4. **USE OF REDISTRIBUTION SOFTWARE.** In connection with the Software Services provided to you by Customer, you may have access to certain "sample," "redistributable" and/or software development software code and tools (individually and collectively "Redistribution Software"). You may use, copy and/or install the Redistribution Software only in accordance with the terns of your agreement with Customer and this document and/or your agreement with Customer.

5. **COPIES.** You may not make any copies of the Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Customer; and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Customer, upon notice from Customer or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Products.

6. **LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY**. You may not reverse engineer, decompile, or disassemble the Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

7. **NO RENTAL.** You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Products except for the sole purpose of accessing the functionality of the Products in the form of Software Services in accordance with the terms of this agreement and any agreement between you and Customer.

8. **TERMINATION.** Without prejudice to any other rights, Customer may terminate your rights to use the Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Customer or Customer's agreement with Microsoft under which the Products are licensed, you must stop using and/or accessing the Products, and destroy all copies of the Products and all of their component parts within thirty (30) days of the termination of your agreement with Customer.

9. **NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT**. Microsoft disclaims, to the extent permitted by applicable law, all warranties and liability for damages by Microsoft or its suppliers for any damages and remedies whether direct, indirect or consequential, arising from the Software Services. Any warranties and liabilities are provided solely by Customer and not by Microsoft, its affiliates or subsidiaries.

10. **PRODUCT SUPPORT.** Any support for the Software Services is provided to you by Customer or a third party on Customer's behalf and is <u>not</u> provided by Microsoft, its suppliers, affiliates or subsidiaries.

11. **NOT FAULT TOLERANT.** The Products are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. You must not use the Products in any application or situation where the Product(s) failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use").

12. **EXPORT RESTRICTIONS.** The Products are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as

well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see http://www.microsoft.com/exporting/.

13. **LIABILITY FOR BREACH.** In addition to any liability you may have to Customer, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.

14. **INFORMATION DISCLOSURE**. You must permit Customer to disclose any information requested by Microsoft under the Customer's Agreement. Microsoft will be an intended third party beneficiary of your agreement with Customer, with the right to enforce provisions of your agreement with Customer and to verify your compliance.

PLEASE READ THIS RED HAT SOFTWARE SUBSCRIPTION AGREEMENT ("AGREEMENT") CAREFULLY BEFORE INSTALLING, EXECUTING OR USING RED HAT SOFTWARE OR SERVICES. BY INSTALLING, EXECUTING OR USING RED HAT SOFTWARE OR SERVICES, YOU SIGNIFY ASSENT TO THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU MUST NOT INSTALL, EXECUTE OR USE RED HAT SOFTWARE AND/OR SERVICES.

This is an Agreement between Red Hat, Inc. ("**Red Hat**") and the individual or entity which purchased Red Hat Software and Services from the Service Provider for use in the Portal ("**You**" or "**you**").

1. Background and Definitions.

1.1 **Definitions.** **"Instance"** means a virtual or physical system on which you install or execute all or a portion of the Software. "**Portal**" means the online portal (e.g. cloud, hosted platform, managed service provider offering) through which you purchase and/or receive access to Software and Services. "**Software**" means the Red Hat branded software, including all modifications, additions and further enhancements, in each case, which are delivered by Red Hat and obtained directly or via Service Provider or another third party, and in either binary or source code form. "**Services**" means access to Software maintenance in the form of fixes, updates, upgrades, modifications and security advisories, when and if available, provided by Red Hat and delivered to you through the Service Provider. "**Service Provider**" means the Red Hat authorized third party from whose Portal you receive access to Software and Services.

1.2 **Agreement Background.** You have purchased the right to access Red Hat Software and Services from Service Provider for use in the Portal. This Agreement establishes the terms and conditions under which Red Hat will provide Software and Services to you in connection with your use of the Software in the Portal, which are in addition to the terms contained in the agreement between you and the Service Provider. Red Hat is not responsible for (a) the actions of Service Provider, (b) any additional obligations, conditions or warranties provided by Service Provider or (c) any products and/or services that Service Provider provides to you under agreements between you and Service Provider.

2. Terms of Service

2.1 **Software Access and Updates.** For each Instance of Software purchased from Services Provider for use in the Portal, you will receive access to a) the Software and (b) Services. Software and Services are provided only for your own benefit and use within the Portal. Support services for the Software, if any, will be provided to you by the Service Provider and Red Hat will not provide to you any direct technical assistance or other support services under this Agreement.

2.2 **Purchase Requirements.** During the term of this Agreement as set forth in Section 4, you are required to purchase Services for each Instance from either (i) Service Provider, when the Software Instance is obtained from Service Provider, or (ii) Red Hat or a Red Hat authorized business partner, when the Software Instance is obtained from Red Hat or authorized business partner. If you are using any of the Services to support or maintain instances of Red Hat or non-Red Hat software (other than Software Instances obtained from and for which you have paid Services Provider) either within or outside the Portal, then you are required to notify Red Hat of such use and pay Red Hat the standard published software subscription fees for such use (e.g. https://www.redhat.com/wapps/store/catalog.html) under the terms of the Red Hat Enterprise Agreement, a copy of which is set forth at www.redhat.com/licenses. Distributing the Software and Services (or any portion) to a third party outside the Portal or using the Software and/or Services to support a third party without paying for each Instance is a material breach of this Agreement even though the open source license applicable to individual software packages may give you the right to distribute those packages (and this Agreement is not intended to interfere with your rights under those individual licenses). For clarification purposes, this Agreement **does not** apply to Software subscriptions purchased from Red Hat directly for use outside the Portal or in conjunction with the Red Hat Cloud Access program (as set forth at https://www.redhat.com/solutions/cloud/access/enroll.html).

3. License.

Use of the Software is governed by the applicable end user license agreement posted at https://www.redhat.com/licenses/eulas/. No right, express or implied, is granted under this Agreement to (i) use any Red Hat or affiliate trade name, service mark, or trademark or (ii) distribute the Software utilizing any Red Hat or affiliate trademarks.

4. Term, Reporting and Inspection.

The Agreement begins on the date that you accept this Agreement or the date you first obtain the ability to access to the Software in the Portal, whichever is earlier, and continues for the period of time you have the ability to access the Software in the Portal. During the term of this Agreement and for one (1) year thereafter, Red Hat or its designated agent may inspect and review your facilities and records in order to verify your compliance with this Agreement. Red Hat will give you written notice of any non-compliance, and you will have fifteen (15) days from the date of such notice to make payment to Red Hat for any amounts owed.

5. Limitation of Liability and Disclaimer of Damages

5.1 Limitation of Liability. FOR ALL EVENTS AND CIRCUMSTANCES, RED HAT'S AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ON ACCOUNT OF PERFORMANCE OR NON-PERFORMANCE, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES AND WILL NOT TO EXCEED THE AMOUNT THAT YOU PAID TO SERVICE PROVIDER ATTRIBUTABLE TO THE RED HAT SOFTWARE AND SERVICES PROVIDED UNDER THIS AGREEMENT (AS DEFINED IN SECTION 1.1 ABOVE) DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS AGREEMENT, LESS THE AMOUNT RECOVERABLE BY YOU FROM SERVICE PROVIDER RELATING TO SUCH LIABILITY.

5.2 Disclaimer of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT WILL RED HAT OR ITS AFFILIATES BE LIABLE TO YOU OR YOUR AFFILIATES FOR: ANY CLAIM BASED UPON A THIRD PARTY CLAIM; ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE; OR FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF DATA, LOST PROFITS, LOST SAVINGS, INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF RED HAT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Representations and Warranties.
Red Hat represents and warrants that, to its knowledge, the Software does not intentionally include malicious or hidden mechanisms or code for the purpose of damaging or corrupting the Software. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, THE SERVICES AND THE SOFTWARE ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED, COMPLY WITH REGULATORY REQUIREMENTS, BE ERROR FREE, THAT RED HAT WILL CORRECT ALL SOFTWARE ERRORS OR THAT INFORMATION STORED WHEN USING THE SERVICES ON VENDOR'S PORTAL WILL BE SECURE. RED HAT SERVICES MAY BE SUBJECT TO DELAYS, OR OTHER LIMITATIONS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS; RED HAT IS NOT RESPONSIBLE FOR SUCH DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY RED HAT, ITS AFFILIATES, DEALERS, DISTRIBUTORS, AGENTS, SERVICE PROVIDER OR EMPLOYEES WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN. RED HAT DOES NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

7. Governing Law/Consent to Jurisdiction.
The validity, interpretation and enforcement of this Agreement will be governed by and construed in accordance with the laws of the United States and of the State of New York without giving effect to the conflicts of laws provisions thereof or the United Nations Convention on Contracts for the International Sale of Goods.   All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the state or federal courts of competent jurisdiction located in Raleigh, North Carolina, USA and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal or state laws or regulations are enacted, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted.

8. Data Restrictions.
You may not use the Software to process or store information, data or technology governed by the International Traffic in Arms Regulations.

9. Miscellaneous.
(9.1) Notices. Notices must be in English, in writing, and will be deemed given when delivered by hand or five (5) days after being sent to the addresses or facsimile numbers set forth below, using a method that provides for positive confirmation of delivery; provided that any notice from you to Red Hat includes a copy sent to: Red Hat, Inc., Attention: General Counsel, 100 East Davie Street, Raleigh, North Carolina 27601; Facsimile: (919) 754-3704. **(9.2) Assignment.** This Agreement is binding on the parties to this Agreement and nothing in this Agreement confers upon any other person any right, of any nature, save for the parties' affiliates. Red Hat may assign this Agreement to its affiliates or subsidiaries or pursuant to a merger or a sale of all or substantially all its assets or stock. **(9.3) Force Majeure.** Except with respect to the payment of fees under this Agreement, neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control. **(9.4) Export Responsibilities.** Red Hat may supply you with technical data that may be subject to export control restrictions. Red Hat will not be responsible for compliance by you with applicable export obligations or requirements for such technical data. You agree to comply with all applicable export control restrictions. **(9.5) Dispute Resolution.** No claim or action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the cause of action has accrued. **(9.6) Severability.** If any provision of this Agreement is held invalid or unenforceable for any reason but would be valid and enforceable if appropriately modified, then such provision will apply with the modification necessary to make it valid and enforceable. If such provision cannot be so modified, the parties agree that such invalidity will not affect the validity of the remaining provisions of the Agreement; provided, however, that if Section 5 cannot be modified to be valid and enforceable, this Agreement will be deemed invalid in its entirety. **(9.7) Waiver.** No waiver will be valid unless in writing signed by an authorized representative of the party against whom such waiver is sought. **(9.8) Complete Agreement.** This Agreement represents the complete agreement between the parties with respect to subject matter hereof and all other agreements with respect to the subject matter hereof are merged therein. **(9.9) Amendment.** This Agreement

may not be amended, supplemented or modified except by a written instrument signed by the parties hereto, which instrument makes specific reference to this Agreement. **(9.10) Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT.

Virtual Machines Appendix

Infrastructure as a Service – Virtual Machines

Service Provision

1. OCSL will provide the number of virtual machines (hereafter, "VM") set out in the Bill of Materials. Each virtual machine will have a specification as follows:

    a. A central processing unit with the number of cores as set out in the Bill of Materials;

    b. Each central processing unit core shall have a clock speed of at least 2.2 gigahertz;

    c. Random access memory of a size as set out in the Bill of Materials, measured in gigabytes;

    d. A virtual hard disk of a capacity as set out in the Bill of Materials, measured in gigabytes;

2. OCSL will install on each VM an operating system (which operating system shall be a supported version of Windows Server selected by the Customer unless otherwise set out in the Bill of Materials). The Customer agrees to be bound by the terms of any licence agreements imposed by the licensor of the operating system if OCSL provides such operating system.

3. OCSL will:

    a. Where:

        i. the Customer has selected a Microsoft Windows operating system in accordance with clause 2 above, install an antivirus protection program on the operating system unless the Customer notifies OCSL in writing that no such program is required;

        ii. the Customer has selected a non-Microsoft Windows operating system, offer to and will, if the Customer elects, install an antivirus protection program on the operating system;

    Provided in both cases that the Customer pays the licensor's license fee for such antivirus protection program and agrees to be bound by the terms of any licence agreement imposed by the licensor.

4. Access by the Customer to each VM shall be governed by the terms of the Networking Appendix or, if no such Appendix forms part of the Agreement, then via the internet.

5. Each VM shall operate on a multi-tenanted platform.

Fees

6. The fee for each VM will be calculated on an hourly rate based on the number of hours in each calendar month that the VM was powered on. The hourly rate payable by the Customer for each VM shall be as set out in the Bill of Materials.

7.   The Customer shall purchase Systems Monitoring (as defined in the Service Management Appendix) for each VM purchased at the fee set out in the Bill of Materials.

Warranties and Exclusions

8.   OCSL does not warrant the performance, nor the functionality, of any operating system installed on a VM.

9.   OCSL does not warrant that the operating systems or applications within the virtual machine will be available (as defined in paragraphs 11 and 12 below or otherwise), as this is dependent upon redundancy being deployed at operating system and application level, which shall be the responsibility of the Customer.

10.   OCSL warrants that the antivirus protection program shall be of industry standard but otherwise does not warrant that such program shall protect against all, or any particular, virus or malicious code.

Storage Appendix

Storage as a Service

Service Provision

1. OCSL will provide data storage at its own data centres ("Data Storage").

2. The maximum capacity of the Data Storage provided shall be as set out in the Bill of Materials and shall (unless specified otherwise) be measured in gigabytes or terabytes. If no unit is specified, the default unit shall be gigabytes.

3. Data Storage will be provided on one of the following types of medium, as specified in the Bill of Materials ("Tier"):

   a. Tier 1 – solid state disk;

   b. Tier 2 – hard disk drive using a SAS (serial attached SCSI) interface, capable of 10,000 or 15,000 revolutions per minute;

   c. Tier 3 – hard disk drive using a SATA (serial ATA) interface, capable of 7,200 revolutions per minute;

   OCSL undertakes to provide Data Storage of a tier at least as good as contracted for but may, in its discretion, make Data Storage available on a higher tier.

4. OCSL will provide the Customer with logical access to the Data Storage within OCSL's data centre (including to VMs as set out in the Virtual Machines Appendix and any Hosted Equipment as set out in the Colocation Appendix).

5. Access by the Customer to the Data Storage from outside OCSL's data centre shall be governed by the terms of the Networking Appendix.

6. Data Storage shall operate on a multi-tenanted platform.

Fees

7. The fee for Data Storage will be calculated on an hourly rate based on: (i) the number of hours in each calendar month that the Data Storage disk (or, if applicable, the VM to which that Data Storage Disk is attached) was powered on; (ii) the capacity of that Data Storage disk ("Capacity"); and (iii) the Tier. The hourly rate payable by the Customer for each gigabyte of Capacity in each Tier shall be as set out in the Bill of Materials.

8. The Customer shall purchase Systems Monitoring (as defined in the Service Management Appendix) at the fee set out in the Bill of Materials.

Warranties and Exclusions

9. The Customer acknowledges that the risk of Customer Data loss cannot be extinguished and (unless the same cannot be excluded by law) OCSL accepts no responsibility for such loss.

10. Notwithstanding paragraph 9 above, the Customer may purchase from OCSL a backup-as-a-service product. In that case, the warranties given by OCSL in respect of backup and restore of the Customer Data shall be set out in a Backup Appendix.

11. Unless the Customer has purchased a backup-as-a-service product, OCSL shall not be obliged to back up the Data Storage or any Customer Data contained thereon.

12. OCSL shall not be responsible (to pay Storage Service Credits or otherwise for any other loss unless the same cannot be excluded by law) for any:

    a. failure of the Customer to properly configure the operating system or the Customer's own software or hardware to access the Data Storage; or

    b. inability of the operating system or the Customer's own software or hardware to access the Data Storage.

Backup Appendix

Backup as a Service

Service Provision

1. OCSL will back up all or part (as set out in the Bill of Materials) of the Customer Data ("Backed-Up Data") using an industry standard backup product and using equipment and storage media provided by OCSL ("Backup").

2. Backups will be provided as follows:

    a. The frequency of Backups taken by OCSL shall be as follows:

        [INSERT]

    b. Each Backup will be retained at the locations set out in the Bill of Materials for the lesser of:

        i. The following data retention period(s):

            [INSERT]

            or

        ii. The duration of the Backup Service under the Agreement (such that, if the Customer no longer purchases Backup from OCSL, the Backup will no longer be retained).

    c. Sub-paragraphs a. and b. above may differ for different categories of Backed-Up Data.

3. Backup shall operate on a multi-tenanted platform.

Fees

4. The monthly fee for Backup shall be payable in two parts:

    a. A flat rate charged per virtual machine (if applicable) as set out in the Bill of Materials; and

    b. A charge for the number of gigabytes of storage used, calculated on a daily basis as follows:

    (Amount of gigabytes used for Backup per day * Daily Rate)

5. The daily rate per gigabyte used ("Daily Rate") shall be calculated by taking the monthly rate set out in the Bill of Materials and applying the following calculation:

    Daily Rate = (monthly rate * 12) / 365

6. The rates payable by the Customer referred to in paragraphs 4.a and 5 may be amended by OCSL from time to time in accordance with any increased costs of providing Backup.

Warranties and Exclusions

7. OCSL shall not be liable for any failure in the performance of the Backup due to faulty and or damaged equipment (physical or logical) provided by the Customer. For the avoidance of doubt, this includes complete failure of the Backup and or a partial failure of the quality of the Backup or the Backed-Up Data.

8. The Customer acknowledges that whilst OCSL will use industry standard backup technology and will take every care in the provision of the Backup service, OCSL does not guarantee successful restoration of the backed-Up Data due to the inherent limitations of any backup technology used by OCSL.

9. OCSL will not be liable for any downtime of the Backup service due to Maintenance Events (as defined in the Service Management Appendix) or maintenance for critical issues or any Force Majeure Event as set out in the Agreement.

10. OCSL may at any time without notice or liability, limit availability of the Backup service in order to perform Maintenance Events (as defined in the Service Management Appendix).

11. OCSL's sole liability (except to the extent that the same cannot be excluded by law) in respect of lost Backed-Up Data is limited to continuing restoration services to the last expected good backup.

12. Backed-Up Data will be restored 'as is'. For the avoidance of doubt, this means that corrupted data backed up as such will be restored as such.

13. The Customer will be entitled to restoration of Backed-Up Data other than to the last expected good backup only if:

a. The Customer provides to OCSL the date(s) from which the Customer requires Backed-Up Data to be restored; and

b. The Customer agrees to pay an additional fee to OCSL for such restoration, such fee to be calculated at OCSL's then standard rates (which shall be provided to the Customer on request).

14. The Customer is responsible for advising OCSL of all new Backed-Up Data (including servers and partitions or data areas that require backups) in writing via a Service Desk ticket (as set out in the Service Management Appendix) so this can be incorporated into the ongoing Backup service. Such new categories or types of Backed-Up Data will be backed up when a change request has been raised, approved by OCSL and marked as implemented. Thereafter, the Customer agrees to pay an additional fee to OCSL for such new Backed-Up Data, such fee to be calculated at OCSL's then standard rates.

15. The Customer is responsible for ensuring that Backed-Up Data which requires backing up is not in use or locked at the time of the Backup.

16. The Customer shall ensure that OCSL has adequate permissions on targets for Backups to attain the Backed-Up Data and install agents and backup software on those devices that are not managed by OCSL.

Service Level Agreement

17. Upon a request by the Customer, OCSL shall use its reasonable endeavours to restore the Backed-Up Data to the last expected good backup within the Incident Response -times set out in Table 1 of the Service Management Appendix, depending upon the assigned priority.

However, the Customer acknowledges that the actual restoration time is dependent upon factors beyond OCSL's control, including (but not limited to):

a. The size of the Backed-Up Data;

b. The amount by which the Backed-Up Data is compressed;

c. Any limitations of the backup or restore software used;

d. Any limitations of any hardware or software (including that of OCSL or the Customer).

18. OCSL shall not therefore be liable for any failure to meet the Resolution time set out in the Service Management Appendix.

19. The Customer acknowledges that a request by the Customer to restore Backed-Up Data shall be treated as a Priority 4 Incident unless the requirement to restore Backed-Up Data (and such other Incident associated with it) falls within the definitions of Priority 1 to 3 (as defined in the Service Management Appendix).

20. For the avoidance of doubt, OCSL's obligation in paragraph 17 above shall be restricted to restoring entire systems and applications to the last expected good backup and shall not be available to restore to the Customer individual files or folders to earlier versions on a piecemeal basis. OCSL may provide such a service, but in its sole discretion and may charge in accordance with paragraph 13.b above.

Backup Appendix

Backup as a Service

Service Provision

1. OCSL will back up all or part (as set out in the Bill of Materials) of the Customer Data ("Backed-Up Data") using an industry standard backup product and using equipment and storage media provided by OCSL ("Backup").

2. For the purposes of providing Backup, OCSL shall, for the duration of the Agreement, provide dedicated storage appliances of a size and at the locations specified in the Bill of Materials or as otherwise agreed in writing between the parties.

3. Backups will be provided as follows:

   a. The frequency and type of Backups taken by OCSL shall be as follows:

      [INSERT]

   b. Each Backup will be retained at the locations set out in the Bill of Materials for the lesser of:

      i. The following data retention period(s):

         [INSERT]

         or

      ii. The duration of the Backup Service under the Agreement (such that, if the Customer no longer purchases Backup from OCSL, the Backup will no longer be retained).

   c. Sub-paragraphs a. and b. above may differ for different categories of Backed-Up Data.

4. The total, usable space available for Backup in respect of each dedicated storage appliance shall be as set out in the Bill of Materials. OCSL shall not be obliged to provide any Backup services in respect of any Backed-Up Data which exceeds the usable space. In such event, the parties may agree additional storage in accordance with the 'Change Management Procedure' set out in paragraph 8 of the Managed Services Schedule.

5. In respect of any dedicated storage appliance installed at the Customer's (or a third party's) premises ("Storage Hardware"):

   a. OCSL grants to the Customer a non-exclusive non-transferable licence to use the Storage Hardware for so long as the Customer continues to receive Backup services under this Agreement;

   b. The Customer shall not without the prior written consent of OCSL use the Storage Hardware in any location except the Customer's premises in which the Storage Hardware was first installed by OCSL;

   c. The Customer acknowledges that it is licensed to use the Storage Hardware only in accordance with the express terms of this Agreement and for the purposes of using the Backup services and not further or otherwise;

d. The Storage Hardware and any intellectual property rights of whatever nature contained in or on the Storage Hardware shall remain the property of OCSL or its suppliers; and

e. The Customer agrees:

i. to allow OCSL or its duly authorised agent or representative upon reasonable notice during working hours to inspect the Storage Hardware and any records, logbook, manual, or handbook forming part of the Storage Hardware;

ii. to use the Storage Hardware in a skilful and proper manner and in accordance with any operating instructions issued for it and to ensure that the Storage Hardware is operated and used by properly skilled and trained personnel, and indemnify OCSL against any failure to do so;

iii. to make no alteration, and not remove any existing components from the Storage Hardware;

iv. to insure the Storage Hardware and keep the Storage Hardware insured throughout the period of loan, for their full replacement value against all risks on a comprehensive insurance policy;

v. to keep the Storage Hardware in its own possession at the Customer's premises in which the Storage Hardware was first installed by OCSL and in compliance with any policy of insurance affecting the Storage Hardware;

vi. not to transfer, sell, assign, sub-license, pledge, or otherwise dispose of, encumber or suffer a lien or encumbrance upon or against any interest in the Storage Hardware;

vii. to deliver up the Storage Hardware in good repair and working order at the end of the period of loan or upon earlier determination of this Agreement to such address as OCSL shall notify to the Customer;

viii. assume all risk of loss or damage to the Storage Hardware upon delivery by OCSL to the Customer and insure them against loss or damage at their list price in the case of hardware, or restoration price in the case of software;

ix. to notify OCSL in writing immediately on the loss of or damage to the Storage Hardware;

x. to indemnify OCSL against any loss or damage to the Storage Hardware while in the possession of the Customer, ordinary wear and tear excepted;

xi. to comply with any licence agreement of any licensor of firmware or software installed on the Storage Hardware.

Fees

6. The monthly fee for Backup shall be payable in two parts:

a. A flat rate charged per virtual machine (if applicable) as set out in the Bill of Materials; and

b. A monthly charge for each dedicated storage appliance as set out in the Bill of Materials.

Warranties and Exclusions

7. OCSL shall not be liable for any failure in the performance of the Backup due to faulty and or damaged equipment or services (physical or logical) provided by the Customer. For the avoidance of doubt, this includes complete failure of the Backup and or a partial failure of the quality of the Backup or the Backed-Up Data.

8. The Customer acknowledges that whilst OCSL will use industry standard backup technology and will take every care in the provision of the Backup service, OCSL does not guarantee successful restoration of the backed-Up Data due to the inherent limitations of any backup technology used by OCSL.

9. OCSL will not be liable for any downtime of the Backup service due to Maintenance Events (as defined in the Service Management Appendix) or maintenance for critical issues or any Force Majeure Event as set out in the Agreement.

10. OCSL may at any time without notice or liability, limit availability of the Backup service in order to perform Maintenance Events (as defined in the Service Management Appendix).

11. OCSL's sole liability (except to the extent that the same cannot be excluded by law) in respect of lost Backed-Up Data is limited to continuing restoration services to the last expected good backup.

12. Backed-Up Data will be restored 'as is'. For the avoidance of doubt, this means that corrupted data backed up as such will be restored as such.

13. The Customer shall be responsible for restoring file-level data and application-level data. OCSL's responsibilities to restore data shall be limited to the restoration of entire virtual machines.

14. The Customer will be entitled to restoration of Backed-Up Data other than to the last expected good backup only if:

a. The Customer provides to OCSL the date(s) from which the Customer requires Backed-Up Data to be restored; and

b. The Customer agrees to pay an additional fee to OCSL for such restoration, such fee to be calculated at OCSL's then standard rates (which shall be provided to the Customer on request).

15. The Customer is responsible for advising OCSL of all new Backed-Up Data (including servers and partitions or data areas that require backups) in writing via a Service Desk ticket (as set out in the Service Management Appendix) so this can be incorporated into the ongoing Backup service. Such new categories or types of Backed-Up Data will be backed up when a change request has been raised, approved by OCSL and marked as implemented. Thereafter, the Customer agrees to pay an additional fee to OCSL for such new Backed-Up Data, such fee to be calculated at OCSL's then standard rates.

16. The Customer is responsible for ensuring that Backed-Up Data which requires backing up is not in use or locked at the time of the Backup.

17. The Customer shall ensure that OCSL has adequate permissions on targets for Backups to attain the Backed-Up Data and install agents and backup software on those devices that are not managed by OCSL.

Service Level Agreement

18. Upon a request by the Customer, OCSL shall use its reasonable endeavours to restore the Backed-Up Data to the last expected good backup within the Incident Response -times set out in Table 1 of the Service Management Appendix, depending upon the assigned priority. However, the Customer acknowledges that the actual restoration time is dependent upon factors beyond OCSL's control, including (but not limited to):

a. The size of the Backed-Up Data;

b. The amount by which the Backed-Up Data is compressed;

c. Any limitations of the backup or restore software used;

d. Any limitations of any hardware or software (including that of OCSL or the Customer).

19. OCSL shall not therefore be liable for any failure to meet the Resolution time set out in the Service Management Appendix.

20. The Customer acknowledges that a request by the Customer to restore Backed-Up Data shall be treated as a Priority 4 Incident unless the requirement to restore Backed-Up Data (and such other Incident associated with it) falls within the definitions of Priority 1 to 3 (as defined in the Service Management Appendix).

21. For the avoidance of doubt, OCSL's obligation in paragraph 17 above shall be restricted to restoring entire systems and applications to the last expected good backup and shall not be available to restore to the Customer individual files or folders to earlier versions on a piecemeal basis. OCSL may provide such a service, but in its sole discretion and may charge in accordance with paragraph 13.b above.

Internet Appendix

Internet Connectivity from OCSL's Data Centre

Service Provision

1. OCSL will provide, or procure the provision of, internet connectivity through an internet service provider to OCSL's Data Centre[s] ("Internet Connectivity").

2. The Customer has purchased either single site Internet Connectivity ("Single Site") or dual site Internet Connectivity ("Dual Site") as set out in the Bill of Materials. Single Site means the internet service providers' connection(s) shall terminate at a single OCSL Data Centre. Dual Site means the internet service providers' connection(s) terminate at two OCSL Data Centres, with a data link between the two Data Centres. The Customer acknowledges that the fees for Internet Connectivity, the Internet Availability and the Internet Service Credit regime set out herein reflect the Customer's purchase of either Dual Site or Single Site.

3. Unless the Customer has purchased an alternative solution from OCSL, the terms of which are governed by a Networking Appendix, the Customer shall make its own arrangements for internet access from its own locations, in order to access any Services designed to be accessed remotely.

4. Internet Connectivity will be provided by the Supplier. The minimum bandwidth available shall be 1 megabit per second, automatically burstable up to line capacity of 1 gigabit per second.

5. Internet Connectivity is a multi-tenanted network. The Customer acknowledges that, whilst the line capacity is 1 gigabit per second, other customers of OCSL shall be entitled to use the line and the actual maximum available bandwidth may decrease according to other users' usage.

6. OCSL shall provide the Customer with the number of internet protocol ("IP") addresses as set out in the Bill of Materials.

Fees

7. The fees payable by the Customer to OCSL shall be measured using a '95th percentile calculation' in the following manner:

    a. A reading of the bandwidth used by the Customer is taken every 1 minute ("A Sample");

    b. The Samples for any given calendar month shall be sorted from the highest bandwidth to the lowest bandwidth;

    c. The top 5% of the Samples shall be removed;

    d. The next highest Sample (after the removal of the top 5%) shall be deemed to be the bandwidth used for the entire calendar month over which Samples were taken ("Monthly Bandwidth").

8. The Bill of Materials shall set out: (i) the fee payable per megabit per second per month of Monthly Bandwidth ("the Base Fee"); (ii) an estimate of the Monthly Bandwidth.

9. For the purpose of calculating the fees for Internet Connectivity, the estimate of Monthly Bandwidth contained in the Bill of Materials shall be disregarded. The monthly fee payable for Internet Connectivity shall instead be calculated using the following formula:

    (Monthly Bandwidth for the previous calendar month * Base Fee)

10. There shall be an additional monthly charge for the number of IP addresses purchased, as set out in the Bill of Materials.

11. If the Monthly Bandwidth exceeds the contracted Monthly Bandwidth specified in the Bill of Materials, the fee payable for Internet Connectivity for each megabit per second per month above the contracted amount shall be doubled.

Warranties and Exclusions

12. OCSL shall not be responsible (for Internet Service Credits or for any other loss, save to the extent that the same cannot be excluded by law) for the failure of OCSL's internet service provider to provide access to the internet (or access to the internet at the bandwidth advertised) for reasons beyond OCSL's reasonable control. The Customer acknowledges and accepts that the fees payable for Internet Connectivity reflect that exclusion and, if OCSL were to take such responsibility, its fees would be higher.

13. Notwithstanding the above, OCSL shall notify the internet service provider when OCSL becomes aware of a failure of Internet Connectivity and shall provide the internet service provider with such assistance as is reasonable to enable the internet service provider to remedy the failure.

14. The Customer accepts and agrees that there are risks inherent when accessing the Internet through a multi-tenanted platform and have chosen this approach to meet requirements, as opposed to deploying dedicated infrastructure.

Colocation Appendix

Hosting of Customer's Equipment

Service Provision

Hosted Equipment

1. For the purposes of this Appendix, *Hosted Equipment* shall mean the computer equipment and related peripherals provided by the Customer and to be hosted by OCSL as further described in this Colocation Appendix.

Facility

2. OCSL shall provide a facility to host the Customer's Hosted Equipment inside one of OCSL's Data Centres as set out in the Bill of Materials, which facility shall comprise of the following:

    (i)   Rack space;

    (ii)   Installation services;

    (iii)   Power (supplied at UK standard voltages and frequencies);

    (iv)   An uninterruptable power supply;

    (v)   Temperature control inline with ASHRAE standards;

    (vi)   Humidity control;

    (vii)   Fire detection and suppression;

    (viii) Peripheral services;

("the Colocation Service")

Rack Space

3. OCSL shall provide the Customer with the quantity of rack space set out in the Bill of Materials, with each full rack providing 42u x 1000mm deep empty spaces, unless specified otherwise. The Customer may purchase either: (i) a number of full racks; or (ii) 'u' space; as specified in the Bill of Materials.

4.   'u' space will be provisioned in a multi-tenanted rack, and therefore may only be purchased for equipment complemented by OCSL's Remote Hands service or Systems Management and Systems Monitoring services (as those two terms are defined in the Service Management Appendix). The Customer will not have physical access to the rack.

5.   The Customer acknowledges that the rack space provided is of a suitable size for the Hosted Equipment. In the event that the Customer wishes to add or alter Hosted Equipment, additional rack space may be required, at an additional cost. The addition or alteration of the Hosted Equipment shall be governed by the variation procedure set out in clause 3 of the Agreement.

Power

6.   The Customer shall be entitled to draw a maximum of 4kW of power per rack (or proportionate part thereof) unless otherwise indicated in the Bill of Materials.

7.   Each rack shall contain a device ("the PDU") installed and calibrated by its manufacturer to measure accurately the amount of energy consumed by that rack ("Rack Consumption"). The figures provided by the PDU shall be final and binding on both OCSL and the Customer.

8.   OCSL shall monitor and log the information produced by the PDU so long as it provides the Colocation Services. Statistics shall be available via OCSL's portal (via a URL as notified to the Customer from time to time).

9.   OCSL shall also monitor the energy consumption of the air conditioning and cooling equipment, UPS conversion losses and generator usage. In addition to the Rack Consumption, the Customer shall be deemed to have used a proportionate part of such additional energy consumption equal to 50% of the Rack Consumption ("Infrastructure Consumption").

10. Energy is currently charged to OCSL by its electricity supplier at a rate of £0.1145 per kWh ("the Power Rate"). Both parties acknowledge that OCSL's supplier may increase or decrease the Power Rate. OCSL shall provide 7 days' notification of any such change, which will take effect on the date prescribed by the supplier.

11. Power usage effectiveness ("Power Usage Effectiveness") shall be 1.5x the total power consumption.

12. The Customer shall pay to OCSL a monthly fee in arrears ("the Power Fee"), calculated using the following formula:

(Total power consumption (Kw) * 24 hours) * (365.25 days / 12 months) * Power Rate * Power Usage Effectiveness

Customer Data

13. OCSL shall at no time access or otherwise process and is not responsible for the Customer Data stored on the Hosted Equipment, unless complimented by OCSL's Systems Management and Systems Monitoring services (as those two terms are defined in the Service Management Appendix).

14. OCSL shall not be liable for loss or corruption of any Customer Data (save to the extent that such loss cannot be excluded by law) stored on the Hosted Equipment.

15. Notwithstanding paragraph 13 above, if the Customer has purchased OCSL's backup-as-a-service to back up the Customer Data stored on the Hosted Equipment then OCSL and the Customer shall be bound by the terms set out in the Backup Appendix to this Agreement.

Fees

16. The Customer shall pay to OCSL:

   a. The one-off set-up fee (the Set Up Fee) as set out in the Bill of Materials upon signature of this Agreement;

   b. The Power Fee monthly in arrears as specified above;

   c. The monthly charge for the Colocation Service as set out in the Bill of Materials ("the Colocation Fee").

Warranties and Exclusions

17. OCSL makes no representations, warranties or assurances that the Hosted Equipment will be compatible with the Colocation Service provided by OCSL.

18. OCSL shall not be liable for the Customer's operation of the Customer Equipment or for theft, damage, liability or otherwise (save to the extent that the same cannot be excluded by law). The Colocation Service is provided on the proviso that the Customer assumes all risks, directly or indirectly associated with the Hosted Equipment.

19. The Customer must ensure, and provide documentary evidence prior to commencement of the Colocation Service, that the Customer Equipment is adequately insured against theft and public liability.

Ownership

20. OCSL acknowledges that all rights, title and interest in the Customer Data, Hosted Equipment (and associated cables) shall be solely owned by the Customer.

21. OCSL owns or has licensed all datacentre monitoring software.

22. The Customer acknowledges that the racks, cabinets, remote power units, PDUs, uninterruptible power supplies and cooling equipment and other related hardware and software is OCSL property or the property of its suppliers.

Remote Hands

23. The Customer may purchase from OCSL additional services to assist with on-site actions such as reboots, server builds, component swaps. A full list of skill sets is available from OCSL on request and may change from time to time ("Remote Hands").

24. Remote Hands is charged on a per half hour basis at OCSL's standard rates at the time (available on request)

Network Access to the Hosted Equipment

25. Network access to the Hosted Equipment shall be governed by the Networking Appendix.

Physical Security and Access to the Hosted Equipment

26. Physical access by the Customer to the Hosted Equipment or the Data Centre is restricted and shall only be granted in accordance with Sub-Appendix A of this Colocation Appendix.

27. OCSL will provide the following minimum physical security at its Data Centre:

- Surveillance cameras and security guards to monitor premises.
- Forced entry barriers at all access points to the Data Centre site.
- 4ft metal fence, double entry gates and a central control system.
- Entry controls controlling access to the Data Centre building and to specific areas within the building.
- Access limited to authorised personnel.
- ID badges required for employee, visitor and vendor access.
- Cables and network ports will be protected from unauthorised access.

- For areas holding computer and network equipment, access will be secured and restricted to authorised personnel.

28. OCSL may alter its physical security from time to time provided that such alterations do not make the Data Centre less secure than provided above.

Sub-Appendix A

Physical Access

OCSL premises access rules and regulations

OCSL's Data Centre operates a restricted access policy.

For the purpose of this Sub-Appendix A, "Representative" means a Customer who wishes to enter the Data Centre or an individual appointed by a Customer and approved by OCSL in writing to enter the Data Centre on that Customer's behalf.

Definitions used in this Sub-Appendix have the same meaning as in the Main Agreement and Colocation Appendix, where the context permits.

Any Representative wishing to enter the Data Centre shall be bound by the following rules and regulations regarding the access to and use of the Data Centre.

OCSL reserves the right, at its sole discretion, to suspend or terminate any service supplied to a Customer and deny access to the Data Centre to any Customer or Representative should that Customer or Representative violate the rules and regulations set forth below, where permitted by law.

General Access requirements

OCSL require appropriate photo identification for access verification. Upon entry into the Data Centre, the Representative will be issued a badge in exchange for their photo identification. Whilst in the Data Centre, this badge MUST be clearly worn at all times. When leaving the Data Centre the badge may be exchanged for the photo identification provided.

The Representative will be shown the site access rules and regulations in force at that time and will be required to acknowledge that they have understood and agreed to abide by them. This is also a fire register and thus failure to adhere to these will result in refusal of access due to health and safety regulations.

Should any outside access be required the Representative must wear high visibility clothing (jacket or vest) at all times.

The Customer shall deliver prior written notice to OCSL of any changes to the list of authorised Representatives. The Customer recognises that OCSL shall only allow Representatives approved in writing by OCSL access to the Data Centre.

Representatives may only access that portion of the Data Centre made available by OCSL to the Representative in question ("*the customer area"*) for the placement, reparation or installation of Hosted Equipment and use of the Data Centre services.

Representatives must obtain the proper authorisation and be accompanied by an OCSL representative prior to accessing any area other than the customer area within the Data Centre.

Access Times and periods

Installations – OCSL requires a minimum of ten (10) working days prior written notice for any installation of Hosted Equipment which may have abnormal access requirements (such as large delivery vehicles). For all other works which may have a material effect on OCSLs operations five (5) working days' notice is required.

Routine Maintenance - OCSL requires a minimum of 24 hours prior written notice to schedule a mutually agreed upon time for Customer-requested maintenance visits. Routine maintenance shall be conducted during normal business hours.

Emergency – OCSL requires prior notice of no less than 2 hours in order to schedule a mutually agreed upon time for Customer emergency visits. Such mutually agreed time may be made out of working hours and OCSL shall make every reasonable effort to attend in an expedient manner.

Data Centre Restrictions

The following restrictions apply:

- Representatives may not move any floor or ceiling tiles or cabinets in the Data Centre

- No Photography or recording equipment of any kind (excluding tape backup equipment) this INCLUDES camera phones shall be taken into the Data Centre. OCSL can provide a mobile phone without integral camera which you may use whilst in the Data Centre with your SIM card. Your camera mobile phone may be left in a secure locker along with any other restricted items in the rest area behind reception

- No food or liquids shall be taken into the Data Centre (except those consumed and kept in the designated rest areas)

- No chemicals, explosives, solvents, cleaners or paints shall be taken into the Data Centre

- No weapons or other inherently dangerous instruments shall be taken into the Data Centre

- You may not wear open-toed shoes or shorts whilst in the Data Centre.

- No item that could damage or interfere with the operation of the premises or any of the equipment therein is permitted inside the premises. Bringing any such item into the premises may result in permanent expulsion from all OCSL facilities. Such items include but are not limited to:

o Uninterruptible Power Supply systems not provided by OCSL or without express prior approval from OCSL

o Climate-control devices

o Electro-magnetic devices

o Paper, cardboard, Styrofoam or other flammable materials

- Representatives are responsible for maintaining their own or Customer's (as the case may be) cage or cabinet areas clean and locked after their escorted access.

Representatives are to utilise the space allocated to them only for the placement of equipment and the use of Data Centre services.

Further restrictions may apply to the Data Centre or specific areas within the Data Centre. Representatives shall be made aware of any such restrictions on attending the Data Centre.

If you have a question regarding items that may be brought into the Data Centre, please check with a member of staff or email security_access@ocslms.co.uk

Working Restrictions

Representatives are forbidden to connect or disconnect any Hosted Equipment or OCSL owned equipment to or from the electricity supply within the Data Centre, except where specifically pre-approved by an authorised member of OCSL.

The operation of Hosted Equipment must at all times comply with manufacturer's specifications, including all power requirements. All connections to and from Hosted Equipment must be clearly labeled to any utility supply in the Data Centre.

Faulty power supplies or other faulty Hosted Equipment must be replaced by the Customer within 24 hours of notification from OCSL. Once OCSL has notified a Customer of faulty equipment, OCSL will be authorised to disconnect such equipment as necessary.

Representatives shall not make any construction changes or material alterations to the interior or exterior portions of the Data Centre including any cabling or power supplies for Hosted Equipment. Any changes or work needs to be performed by OCSL at the Customer's expense.

Customers are responsible for all their Hosted Equipment. Hosted Equipment must be configured and run at all times in compliance with the manufacturer's specifications, including power outlet, power consumption and clearance requirements. Representatives shall not place any hardware or other equipment in the Data Centre that has not been identified in writing to OCSL and authorised by OCSL.

Customers must use their best efforts to provide OCSL with at least 48 hours prior notice any time it intends to connect or disconnect any Hosted Equipment or other equipment.

OCSL may temporarily provide to the Customer tools, dumb terminals, monitors, monitor cables, keyboards, extension cables and the like, as available, for the purpose of using, installing or administering the Hosted Equipment. This temporary equipment is available on an "as is" basis, without any implied or written warranties. The Customer must sign out such equipment from an OCSL employee.

If Customers use the temporary equipment, they do so at their own risk.

Data Centre Conduct

Representatives must not:

- Misuse or abuse any equipment owned or operated by OCSL.

- Make any unauthorized use of, or interfere with, any property or equipment owned or operated by any other Customer of OCSL.

- Conduct themselves in an unprofessional manner or behave in an offensive way toward any individual, including OCSL personnel and any other Representatives on site.

- Violate any laws or engage in any criminal activity while on OCSL property or within the Data Centre. Misconduct will result in permanent expulsion from all OCSL facilities and /or prosecution to the fullest extent of the law.

- Violate the OCSL acceptable use policy, an updated version of which may be found on the OCSL Web site.

In addition the Customer agrees to observe and follow all of the then current building rules and regulations or other rules, policies and procedures of the Data Centre and any updated version of this Sub-Appendix as shall be supplied to the Customer from time to time.

Upon termination of a Customer's Colocation Service with OCSL for whatever reason, OCSL shall give the Customer access to the Data Centre on the terms of this Sub-Appendix to remove all of the Hosted Equipment.

Firewall Appendix

Firewall as a Service

Service Provision

1. OCSL will provide a virtual, managed, internet-facing firewall to enable the Customer to control the incoming and outgoing internet traffic to:

   a. the Hosted Equipment (as defined in the Colocation Appendix); and

   b. the VMs (as defined in the Virtual Machines Appendix).

   ("Internet Firewall").

2. OCSL will provide a virtual, managed, internal firewall to enable the Customer to control the incoming and outgoing network traffic between the following:

   a. Each local area network upon which a single or set of VM's (as defined in the Virtual Machines Appendix) may reside;

   b. Any local area network upon which a single VM or set of VM's (as defined in the Virtual Machines Appendix) may reside, and the local area network to which Hosted Equipment (as defined in the Colocation Appendix) is connected;

   c. Any local area network and any wide area network.

   ("Internal Firewall")

3. OCSL shall manage and configure the Internet Firewall and Internal Firewall in accordance with the Customer's written instructions (so long as such instructions are within the capabilities of the firewall products used by OCSL). The Customer shall not be entitled to administration access to the Internet Firewall or Internal Firewall (or the underlying hardware).

4. OCSL shall provide and install firmware upgrades to its firewall hardware as recommended by the manufacturer.

5. The Internet Firewall and Internal Firewall are virtualised contexts upon multi-tenanted physical appliances, unless specified otherwise in the Bill of Materials.

Fees

6. The fees payable by the Customer for the Internet Firewall and Internal Firewall shall be as set out in the Bill of Materials.

7. The Customer shall purchase Systems Monitoring (as defined in the Service Management Appendix) at the fee set out in the Bill of Materials.

Warranties and Exclusions

8. OCSL shall use industry-standard firewall products to provide the Internet Firewall and Internal Firewall. OCSL shall not be responsible (save to the extent that the same cannot be excluded by law) for any inherent limitation of the hardware used.

9. It is the Customer's sole responsibility to provide OCSL with accurate instructions for the management and configuration of the Internet Firewall and Internal Firewall. Firewall configuration by OCSL uses OCSL IPRs and OCSL shall be under no obligation to provide details of such configuration from any firewall device in any form.

Firewall Appendix

Firewall as a Service – Hardware Firewall for Dedicated Backup Appliance

Service Provision

1.   OCSL will provide a managed firewall to enable OCSL to control the incoming and outgoing network traffic between the Data Link (as defined in the Networking Appendix) and the Customer's local area network.

      ("Firewall")

2.   The Customer shall not be entitled to administration access to the Firewall (or the underlying hardware).

3.   OCSL shall provide and install firmware upgrades to its firewall hardware as recommended by the manufacturer.

Fees

4.   The fees payable by the Customer for the Firewall shall be as set out in the Bill of Materials.

5.   The Customer shall purchase Systems Monitoring (as defined in the Service Management Appendix) at the fee set out in the Bill of Materials.

Warranties and Exclusions

6.   OCSL shall use industry-standard firewall products to provide the Firewall. OCSL shall not be responsible (save to the extent that the same cannot be excluded by law) for any inherent limitation of the hardware used.

7.   Firewall configuration by OCSL uses OCSL IPRs and OCSL shall be under no obligation to provide details of such configuration from any firewall device in any form.

Firewall Appendix

Firewall as a Service

Service Provision

1. OCSL will provide a managed, internet-facing firewall to enable the Customer to control the incoming and outgoing internet traffic to:

   a. the Hosted Equipment (as defined in the Colocation Appendix); and

   b. the VMs (as defined in the Virtual Machines Appendix).

   ("Internet Firewall").

2. OCSL will provide a managed, internal firewall to enable the Customer to control the incoming and outgoing network traffic between the following:

   a. Each local area network upon which a single or set of VM's (as defined in the Virtual Machines Appendix) may reside;

   b. Any local area network upon which a single VM or set of VM's (as defined in the Virtual Machines Appendix) may reside, and the local area network to which Hosted Equipment (as defined in the Colocation Appendix) is connected;

   c. Any local area network and any wide area network.

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3. OCSL shall manage and configure the Internet Firewall and Internal Firewall in accordance with the Customer's written instructions (so long as such instructions are within the capabilities of the firewall products used by OCSL). The Customer shall not be entitled to administration access to the Internet Firewall or Internal Firewall (or the underlying hardware).

4. OCSL shall provide and install firmware upgrades to its firewall hardware as recommended by the manufacturer.

5. The Internet Firewall and Internal Firewall are virtualised contexts upon multi-tenanted physical appliances, unless specified otherwise in the Bill of Materials.

Fees

6. The fees payable by the Customer for the Internet Firewall and Internal Firewall shall be as set out in the Bill of Materials.

7. The Customer shall purchase Systems Monitoring (as defined in the Service Management Appendix) at the fee set out in the Bill of Materials.

Warranties and Exclusions

8. OCSL shall use industry-standard firewall products to provide the Internet Firewall and Internal Firewall. OCSL shall not be responsible (save to the extent that the same cannot be excluded by law) for any inherent limitation of the hardware used.

9. It is the Customer's sole responsibility to provide OCSL with accurate instructions for the management and configuration of the Internet Firewall and Internal Firewall. Firewall configuration by OCSL uses OCSL IPRs and OCSL shall be under no obligation to provide details of such configuration from any firewall device in any form.

Service Management Appendix

Incident Response, Maintenance Events, Systems Monitoring and Management

Definitions

1.   For the purposes of this Appendix the following definitions shall apply:

Incident

An unplanned interruption to an IT service or reduction in the quality of an IT service. Failure of any item, software or hardware, used in the support of a system that has not yet affected service is also an Incident.

An Incident occurs when the operational status of a production item changes from working to failing or about to fail, resulting in a condition in which the item is not functioning as it was designed or implemented.

Incidents are prioritised as they happen, based on impact and urgency, using Priority 1 to Priority 4 below.

Initial Response

Time elapsed between the time the Incident is reported and the time it is assigned to an individual for investigation. For Priority 1 Incidents, this will be the initial telephone contact with the Service Desk.

Priority 1

System down. Any fault that renders the system inoperative or prevents users performing critical transactions. Such Incidents must be reported to the OCSL service desk by telephone.

Priority 2

System is partially unavailable. Any fault which restricts a user from performing normal day-to-day business transactions.

Priority 3

System is available but inconvenient to use. A general service request from, or a problem affecting, a single user of a non-critical nature and that has an existing work around solution.

Priority 4

General assistance enquiry. System has cosmetic problem that does not interfere with day-to-day transaction processing.

Progress Update

Updates provided to clients on actions taken and any next steps proposed to initiate a resolution to the Incident logged. These will occur every hour or as mutually agreed between OCSL and the client from time to time.

Resolution

Service restored to a point where the customer is able to carry out day-to-day transaction processing. In some cases, this may only be a work around solution until the root cause of the Incident is identified and corrected.

Target Resolution

The target time that OCSL will aim to achieve a Resolution within, aligned to the priority of the logged Incident.

Third Party

An organisation providing services via contracts held directly with the Customer, and not contracted via OCSL.

Incidents

2. On the occurrence of an Incident related to any Services detailed within this Agreement, OCSL and/or the Customer shall, as soon as it becomes aware of an Incident, report that Incident by logging a call with the OCSL service desk ("Service Desk") using the procedure set out below.

3. Each Incident will have one of four priorities assigned, which will be agreed with the Customer based on the priority definitions set out in paragraph 1 above.

4. OSCL shall ensure that the Incident details are passed to the appropriate internal technical team and allocated to the individual most capable of resolving the Incident (the "Incident Owner"). The Incident Owner's name will be logged on OCSL's Incident Management System.

5. Progress Reports will then be issued by the Incident Owner to the Customer as mutually agreed between OCSL and the Customer from time to time.

6. Once the Incident has been resolved the Incident Owner will inform the Service Desk of the Incident resolution. The Incident record will then be updated accordingly, with a written account detailing what happened and how the Incident was resolved. Immediately on OCSL being satisfied that the Incident is resolved, the Customer will be informed.

7. Once informed of the Incident resolution the Customer shall confirm to OCSL whether or not the Incident is resolved and if the Customer contact who initially reported the problem is satisfied with the resolution. Once confirmation is received from the Customer, then OCSL shall close the Incident record and the Incident shall be deemed to have been resolved.

8. In the event that the Customer informs OCSL that the Incident is not resolved, OCSL shall in accordance with this Service Management Appendix resolve the outstanding Incident and following the procedure set out herein.

9. OCSL shall comply with the following response and resolution times:

Table 1

Priority	Priority 1	Priority 2	Priority 3	Priority 4
Initial Response – Incident reported within Normal Working Hours	1 hour	2 hours	4 hours	24 hours
Initial Response – Incident reported outside Normal Working Hours	2 hours	4 hours	12 hours	N/A
Target Resolution – within Normal Working Hours	4 hours (or 6 hours for Wide Area Networks)	8 hours	16 hours	20 Business Days

10. Limited support for operating systems will be available should the manufacturer announce that the operating system as reached its end-of-life (EOL) or end-of-sale (EOS). This may affect the response times provided above accordingly.

11. Critical security patches will continue to be applied for as long as they are published by the manufacturer.

Service Desk Logging Procedure

12. The Customer must call the 'Servicedesk' using the telephone number provided by OCSL to the Customer from time to time in order to log a Priority Level 1 problem otherwise the response may be delayed.

13. Upon calling the Servicedesk, the Customer must follow the appropriate prompts to log the call with the relevant team.

14. The Customer must log all other Incidents, service requests or change requests via the customer portal ("the Portal") using the URL provided by OCSL to the Customer from time to time.

15. The Customer agrees that:

    a.   Tickets logged with the Servicedesk by phone must be a Priority 1 Level problem that warrants a more immediate response;

    b.   Tickets logged via the Portal will be actioned within Normal Business Hours;

16. When calling the Servicedesk, the call response specialist answering the call will require, and the Customer shall supply, the following information:

    a.   Company name;

    b.   Contact name;

    c.   Contact number;

    d.   A description of the issue;

    e.   System name;

    f.   IP address (where applicable).

17. Once logged, the Customer can track the progress of its enquiry 24x7x365 (and 366 during a leap year) via the Portal by inputting its case reference number.

18. OCSL may change the Servicedesk telephone number or the Portal URL by notice in writing or by e-mail.

Maintenance Events

19. Maintenance of computer equipment and other items of equipment used to deliver the Services that may require interruption of the Services ("Maintenance Events") shall be permitted as follows:

    a.   OCSL may interrupt any or all of the Services to perform emergency maintenance during the daily window of 10.00 pm to 2.00 am UK time;

    b.   In addition to the right in a. above, OCSL may interrupt all or any of the Services outside Normal Business Hours for maintenance, provided that it has given Customer at least three calendar days' advance notice;

    c.   Where the terms of a Backup Appendix apply and in addition to the rights in a. and b. above, OCSL may interrupt Backup (as defined in the Backup Appendix) within Normal Business Hours, provided that it has given the Customer at least three calendar days' advance notice.

20. OCSL shall at all times use reasonable endeavours to keep any service interruptions to a minimum.

Systems Monitoring

21. OCSL will monitor infrastructure performance and generate alerts based upon criteria agreed with the Customer from time to time ("Systems Monitoring").

22. Issues or performance metrics that will be monitored include, where applicable:

   a.   Servers and storage units:

      i.   Failure;

      ii.   Performance of disk space, CPU utilisation, memory utilisation;

      iii.   Server hardware components such as system fans ;

      iv.   Associated network services.

   b.   Switches:

      i.   Up time;

      ii.   Throughput;

      iii.   Discards;

      iv.   CRCs.

   c.   Firewalls:

      i.   Rule usage logging;

      ii.   Throughput;

      iii.   Up time;

   d.   Intrusion Detection (if the service is taken).

   e.   Routers:

      i.   Throughput;

      ii.   Uptime;

      iii.   Discards;

      iv.   CRCs;

   f.   Changes and configurations.

Systems Management

23. OCSL will manage the VMs (as defined in the Virtual Machines Appendix) up to operating system level, to include any software installed by default as part of the base operating system ("Systems Management").

24. Any software installed on top of the operating system, such as (but not limited to) middleware, databases or line of business application software remains the responsibility of the Customer unless otherwise agreed in writing.

Patching

25. As part of the Systems Management service, OCSL will be responsible for operating system patching.

    Operating system patch release schedules are typically as follows:

    a. Security updates for major products such as the Microsoft Windows Server operating system are released on a monthly cycle (these are referred to as patch Tuesday).

    b. Non-security updates are generally released every quarter. There are occasionally exceptions to this rule depending on the nature of the update.

    c. There are on occasions more urgent security patches released which are made available immediately.

26. With consideration to the above release schedules, OCSL will patch every 3 months (where a patch has been provided by the licensor of the operating system), with exceptions to specific patch releases being installed on an ad-hoc basis.

27. It will be OCSL's decision whether to implement an emergency release for any updates, or whether they should be added to the quarterly release cycle.

28. Any patch deployment will be treated as a change request in regards to the ITIL process, and as such, subject to review, rollback and back out plans. However for the avoidance of doubt Customer will not be permitted to decline the change unless they agree that any agreed Availability (and therefore any Service Level Agreement) will not apply to the affected assets for the period the patch remains absent.

29. Updates for Microsoft Windows operating systems will be scheduled using the following format:

Production servers	Test and development servers
January week 3 & 4 (Monday – Thursday)	January week 1 & 2 (Monday – Thursday)
April week 3 & 4 (Monday – Thursday)	April week 1 & 2 (Monday – Thursday)
July week 3 & 4 (Monday – Thursday)	July week 1 & 2 (Monday – Thursday)
October week 3 & 4 (Monday – Thursday)	October week 1 & 2 (Monday – Thursday)

32. Update schedules for non-Microsoft Windows operating systems may vary according to the timetable provided by the licensor of that operating system from time to time.

Service Delivery

If purchased and listed on the Bill of Materials:

30. OCSL will provide the Customer with a Service Delivery Manger (SDM) from time to time who will act as the single point of escalation for all matters relating to the Services and any issues that arise. Part of the role will be to understand the Customer's business and IT needs and to continually drive best practice to ensure service levels are met and exceeded.

31. Every month a service report will be produced (and subject to level of service delivery purchased) delivered ==[at the Customer's site] [by e-mail]==, which will cover the following points:

    a.   Executive summary;

    b.   Service improvement;

    c.   Service Desk information;

    d.   All changes closed per period and outstanding at end of period;

    e.   Service Metrics – Availability (as defined in the Storage Appendix and Virtual Machines Appendix), capacity and performance of all assets managed or monitored.

Third Party Management

32. The following shall be Third Party suppliers managed by OCSL (if any). If there are no Third Party suppliers listed, OCSL shall have no obligations under these paragraphs 32 to 36. All Third Party suppliers not specifically listed will be the sole responsibility of the Customer:

    a.   [TBC]

33. If an Incident is deemed to be addressable by one of the Customer's Third Party suppliers managed by OCSL and listed above (if any) and provided that Third Party agrees to the same, OCSL will escalate and manage the Incident with the Third Party supplier through to resolution, in accordance with the Customer's contract/agreement with that Third Party supplier. OCSL shall be entitled to impose reasonable security and access policies on such Third Parties as may be required from time to time.

    For example: a support Incident is reported to the Service Desk by a user and assessed by OCSL be a fault with the Customer's own hardware. This will then be appropriately escalated to the Customer's nominated hardware maintenance supplier.

34. OCSL will then expect the Third Party supplier to resolve the Incident under the terms of the Customer's contract/agreement with that supplier and inform OCSL when the Incident has been resolved. As part of this process, OCSL will monitor the progress of the Incident through to resolution and keep the Customer appropriately informed.

35. OCSL will be responsible for:

a. Receiving IT service related Incident from the Customer to the Service Desk;

b. Logging Incidents on OCSL's call management system;

c. If appropriate, logging an Incident with the Third Party suppliers and manage the Incident through to resolution;

d. Providing the Customer with timely updates on the status of open Incidents;

e. In the event of an Incident not being resolved by Third Party in accordance with the Customer's contract/agreement with that Third Party, escalating the Incident to a nominated Customer contact who will assist in finding a resolution.

36. The Customer acknowledges that no service contract is held between OCSL and the Customer's Third Party suppliers. While OCSL is able to liaise with them on the Customer's behalf therefore, ultimate responsibility for the level of service delivered by a Third Party remains with the Customer.

Service Management Appendix

Incident Response, Maintenance Events, Systems Monitoring and Management

Definitions

1.   For the purposes of this Appendix the following definitions shall apply:

Incident

An unplanned interruption to an IT service or reduction in the quality of an IT service. Failure of any item, software or hardware, used in the support of a system that has not yet affected service is also an Incident.

An Incident occurs when the operational status of a production item changes from working to failing or about to fail, resulting in a condition in which the item is not functioning as it was designed or implemented.

Incidents are prioritised as they happen, based on impact and urgency, using Priority 1 to Priority 4 below.

Initial Response

Time elapsed between the time the Incident is reported and the time it is assigned to an individual for investigation. For Priority 1 Incidents, this will be the initial telephone contact with the Service Desk.

Priority 1

System down. Any fault that renders the system inoperative or prevents users performing critical transactions. Such Incidents must be reported to the OCSL service desk by telephone.

Priority 2

System is partially unavailable. Any fault which restricts a user from performing normal day-to-day business transactions.

Priority 3

System is available but inconvenient to use. A general service request from, or a problem affecting, a single user of a non-critical nature and that has an existing work around solution.

Priority 4

General assistance enquiry. System has cosmetic problem that does not interfere with day-to-day transaction processing.

Progress Update

Updates provided to clients on actions taken and any next steps proposed to initiate a resolution to the Incident logged. These will occur every hour or as mutually agreed between OCSL and the client from time to time.

Resolution

Service restored to a point where the customer is able to carry out day-to-day transaction processing. In some cases, this may only be a work around solution until the root cause of the Incident is identified and corrected.

Target Resolution

The target time that OCSL will aim to achieve a Resolution within, aligned to the priority of the logged Incident.

Third Party

An organisation providing services via contracts held directly with the Customer, and not contracted via OCSL.

Incidents

2.   On the occurrence of an Incident related to any Services detailed within this Agreement, OCSL and/or the Customer shall, as soon as it becomes aware of an Incident, report that Incident by logging a call with the OCSL service desk ("Service Desk") using the procedure set out below.

3.   Each Incident will have one of four priorities assigned, which will be agreed with the Customer based on the priority definitions set out in paragraph 1 above.

4.   OSCL shall ensure that the Incident details are passed to the appropriate internal technical team and allocated to the individual most capable of resolving the Incident (the "Incident Owner"). The Incident Owner's name will be logged on OCSL's Incident Management System.

5.   Progress Reports will then be issued by the Incident Owner to the Customer as mutually agreed between OCSL and the Customer from time to time.

6.   Once the Incident has been resolved the Incident Owner will inform the Service Desk of the Incident resolution. The Incident record will then be updated accordingly, with a written account detailing what happened and how the Incident was resolved. Immediately on OCSL being satisfied that the Incident is resolved, the Customer will be informed.

7. Once informed of the Incident resolution the Customer shall confirm to OCSL whether or not the Incident is resolved and if the Customer contact who initially reported the problem is satisfied with the resolution. Once confirmation is received from the Customer, then OCSL shall close the Incident record and the Incident shall be deemed to have been resolved.

8. In the event that the Customer informs OCSL that the Incident is not resolved, OCSL shall in accordance with this Service Management Appendix resolve the outstanding Incident and following the procedure set out herein.

9. OCSL shall comply with the following response and resolution times:

Table 1

Priority	Priority 1	Priority 2	Priority 3	Priority 4
Initial Response – Incident reported within Normal Working Hours	1 hour	2 hours	4 hours	24 hours
Initial Response – Incident reported outside Normal Working Hours	2 hours	4 hours	12 hours	N/A
Target Resolution – within Normal Working Hours	4 hours (or 6 hours for Wide Area Networks)	8 hours	16 hours	20 Business Days

10. Limited support for operating systems will be available should the manufacturer announce that the operating system as reached its end-of-life (EOL) or end-of-sale (EOS). This may affect the response times provided above accordingly.

11. Critical security patches will continue to be applied for as long as they are published by the manufacturer.

Service Desk Logging Procedure

12. The Customer must call the 'Servicedesk' using the telephone number provided by OCSL to the Customer from time to time in order to log a Priority Level 1 problem otherwise the response may be delayed.

13. Upon calling the Servicedesk, the Customer must follow the appropriate prompts to log the call with the relevant team.

14. The Customer must log all other Incidents, service requests or change requests via the customer portal ("the Portal") using the URL provided by OCSL to the Customer from time to time.

15. The Customer agrees that:

    a. Tickets logged with the Servicedesk by phone must be a Priority 1 Level problem that warrants a more immediate response;

    b. Tickets logged via the Portal will be actioned within Normal Business Hours;

16. When calling the Servicedesk, the call response specialist answering the call will require, and the Customer shall supply, the following information:

    a. Company name;

    b. Contact name;

    c. Contact number;

    d. A description of the issue;

    e. System name;

    f. IP address (where applicable).

17. Once logged, the Customer can track the progress of its enquiry 24x7x365 (and 366 during a leap year) via the Portal by inputting its case reference number.

18. OCSL may change the Servicedesk telephone number or the Portal URL by notice in writing or by e-mail.

Maintenance Events

19. Maintenance of computer equipment and other items of equipment used to deliver the Services that may require interruption of the Services ("Maintenance Events") shall be permitted as required by OCSL.

20. OCSL shall at all times use reasonable endeavours to keep any service interruptions to a minimum.

Systems Monitoring

21. OCSL will monitor infrastructure performance and generate alerts based upon criteria agreed with the Customer from time to time ("Systems Monitoring").

22. Issues or performance metrics that will be monitored include, where applicable:

    a. Servers and storage units:

        i. Failure;

      ii.   Performance of disk space, CPU utilisation, memory utilisation;

      iii.   Server hardware components such as system fans ;

      iv.   Associated network services.

b.   Switches:

      i.   Up time;

      ii.   Throughput;

      iii.   Discards;

      iv.   CRCs.

c.   Firewalls:

      i.   Rule usage logging;

      ii.   Throughput;

      iii.   Up time;

d.   Intrusion Detection (if the service is taken).

e.   Routers:

      i.   Throughput;

      ii.   Uptime;

      iii.   Discards;

      iv.   CRCs;

f.   Changes and configurations.

Systems Management

23.   OCSL will manage the Storage Hardware (as defined in the Backup Appendix) up to operating system level, to include any software installed by default as part of the base operating system ("Systems Management").

24.   Any software installed on top of the operating system, such as (but not limited to) middleware, databases or line of business application software remains the responsibility of the Customer unless otherwise agreed in writing.

Patching

25.   As part of the Systems Management service, OCSL will be responsible for operating system patching.

Operating system patch release schedules are typically as follows:

a. Security updates for major products such as the Microsoft Windows Server operating system are released on a monthly cycle (these are referred to as patch Tuesday).

b. Non-security updates are generally released every quarter. There are occasionally exceptions to this rule depending on the nature of the update.

c. There are on occasions more urgent security patches released which are made available immediately.

26. With consideration to the above release schedules, OCSL will patch every 3 months (where a patch has been provided by the licensor of the operating system), with exceptions to specific patch releases being installed on an ad-hoc basis.

27. It will be OCSL's decision whether to implement an emergency release for any updates, or whether they should be added to the quarterly release cycle.

28. Any patch deployment will be treated as a change request in regards to the ITIL process, and as such, subject to review, rollback and back out plans. However for the avoidance of doubt Customer will not be permitted to decline the change unless they agree that any agreed Availability (and therefore any Service Level Agreement) will not apply to the affected assets for the period the patch remains absent.

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Service Management Appendix

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Incidents are prioritised as they happen, based on impact and urgency, using Priority 1 to Priority 4 below.

Initial Response

Time elapsed between the time the Incident is reported and the time it is assigned to an individual for investigation. For Priority 1 Incidents, this will be the initial telephone contact with the Service Desk.

Priority 1

System down. Any fault that renders the system inoperative or prevents users performing critical transactions. Such Incidents must be reported to the OCSL service desk by telephone.

Priority 2

System is partially unavailable. Any fault which restricts a user from performing normal day-to-day business transactions.

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General assistance enquiry. System has cosmetic problem that does not interfere with day-to-day transaction processing.

Progress Update

Updates provided to clients on actions taken and any next steps proposed to initiate a resolution to the Incident logged. These will occur every hour or as mutually agreed between OCSL and the client from time to time.

Resolution

Service restored to a point where the customer is able to carry out day-to-day transaction processing. In some cases, this may only be a work around solution until the root cause of the Incident is identified and corrected.

Target Resolution

The target time that OCSL will aim to achieve a Resolution within, aligned to the priority of the logged Incident.

Third Party

An organisation providing services via contracts held directly with the Customer, and not contracted via OCSL.

Incidents

2.	On the occurrence of an Incident related to any Services detailed within this Agreement, OCSL and/or the Customer shall, as soon as it becomes aware of an Incident, report that Incident by logging a call with the OCSL service desk ("Service Desk") using the procedure set out below.

3.	Each Incident will have one of four priorities assigned, which will be agreed with the Customer based on the priority definitions set out in paragraph 1 above.

4.	OSCL shall ensure that the Incident details are passed to the appropriate internal technical team and allocated to the individual most capable of resolving the Incident (the "Incident Owner"). The Incident Owner's name will be logged on OCSL's Incident Management System.

5.	Progress Reports will then be issued by the Incident Owner to the Customer as mutually agreed between OCSL and the Customer from time to time.

6.	Once the Incident has been resolved the Incident Owner will inform the Service Desk of the Incident resolution. The Incident record will then be updated accordingly, with a written account detailing what happened and how the Incident was resolved. Immediately on OCSL being satisfied that the Incident is resolved, the Customer will be informed.

7. Once informed of the Incident resolution the Customer shall confirm to OCSL whether or not the Incident is resolved and if the Customer contact who initially reported the problem is satisfied with the resolution. Once confirmation is received from the Customer, then OCSL shall close the Incident record and the Incident shall be deemed to have been resolved.

8. In the event that the Customer informs OCSL that the Incident is not resolved, OCSL shall in accordance with this Service Management Appendix resolve the outstanding Incident and following the procedure set out herein.

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11. Critical security patches will continue to be applied for as long as they are published by the manufacturer.

Service Desk Logging Procedure

12. The Customer must call the 'Servicedesk' using the telephone number provided by OCSL to the Customer from time to time in order to log a Priority Level 1 problem otherwise the response may be delayed.

13. Upon calling the Servicedesk, the Customer must follow the appropriate prompts to log the call with the relevant team.

14. The Customer must log all other Incidents, service requests or change requests via the customer portal ("the Portal") using the URL provided by OCSL to the Customer from time to time.

15. The Customer agrees that:

   a. Tickets logged with the Servicedesk by phone must be a Priority 1 Level problem that warrants a more immediate response;

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16. When calling the Servicedesk, the call response specialist answering the call will require, and the Customer shall supply, the following information:

   a. Company name;

   b. Contact name;

   c. Contact number;

   d. A description of the issue;

   e. System name;

   f. IP address (where applicable).

17. Once logged, the Customer can track the progress of its enquiry 24x7x365 (and 366 during a leap year) via the Portal by inputting its case reference number.

18. OCSL may change the Servicedesk telephone number or the Portal URL by notice in writing or by e-mail.

Maintenance Events

19. Maintenance of computer equipment and other items of equipment used to deliver the Services that may require interruption of the Services ("Maintenance Events") shall be permitted as follows:

   a. OCSL may interrupt any or all of the Services to perform emergency maintenance during the daily window of 10.00 pm to 2.00 am UK time;

   b. In addition to the right in a. above, OCSL may interrupt all or any of the Services outside Normal Business Hours for maintenance, provided that it has given Customer at least three calendar days' advance notice;

   c. In addition to the rights in a. and b. above, OCSL may interrupt backup within Normal Business Hours, provided that it has given the Customer at least three calendar days' advance notice.

20. OCSL shall at all times use reasonable endeavours to keep any service interruptions to a minimum.

Systems Monitoring

21. OCSL will monitor infrastructure performance and generate alerts based upon criteria agreed with the Customer from time to time ("Systems Monitoring").

22. Issues or performance metrics that will be monitored include, where applicable:

   a. Servers and storage units:

      i. Failure;

      ii. Performance of disk space, CPU utilisation, memory utilisation;

      iii. Server hardware components such as system fans ;

      iv. Associated network services.

   b. Switches:

      i. Up time;

      ii. Throughput;

      iii. Discards;

      iv. CRCs.

   c. Firewalls:

      i. Rule usage logging;

      ii. Throughput;

      iii. Up time;

   d. Intrusion Detection (if the service is taken).

   e. Routers:

      i. Throughput;

      ii. Uptime;

      iii. Discards;

      iv. CRCs;

   f. Changes and configurations.

Systems Management

23. OCSL will manage the agreed virtual machines up to operating system level, to include any software installed by default as part of the base operating system ("Systems Management").

24.	Any software installed on top of the operating system, such as (but not limited to) middleware, databases or line of business application software remains the responsibility of the Customer unless otherwise agreed in writing.

Patching

25.	As part of the Systems Management service, OCSL will be responsible for operating system patching.

	Operating system patch release schedules are typically as follows:

	a.	Security updates for major products such as the Microsoft Windows Server operating system are released on a monthly cycle (these are referred to as patch Tuesday).

	b.	Non-security updates are generally released every quarter. There are occasionally exceptions to this rule depending on the nature of the update.

	c.	There are on occasions more urgent security patches released which are made available immediately.

26.	With consideration to the above release schedules, OCSL will patch every 3 months (where a patch has been provided by the licensor of the operating system), with exceptions to specific patch releases being installed on an ad-hoc basis.

27.	It will be OCSL's decision whether to implement an emergency release for any updates, or whether they should be added to the quarterly release cycle.

28.	Any patch deployment will be treated as a change request in regards to the ITIL process, and as such, subject to review, rollback and back out plans. However for the avoidance of doubt Customer will not be permitted to decline the change unless they agree that any agreed Availability (and therefore any Service Level Agreement) will not apply to the affected assets for the period the patch remains absent.

29.	Updates for Microsoft Windows operating systems will be scheduled using the following format:

Production servers	Test and development servers
January week 3 & 4 (Monday – Thursday)	January week 1 & 2 (Monday – Thursday)
April week 3 & 4 (Monday – Thursday)	April week 1 & 2 (Monday – Thursday)
July week 3 & 4 (Monday – Thursday)	July week 1 & 2 (Monday – Thursday)
October week 3 & 4 (Monday – Thursday)	October week 1 & 2 (Monday – Thursday)

32.	Update schedules for non-Microsoft Windows operating systems may vary according to the timetable provided by the licensor of that operating system from time to time.

Service Delivery

If purchased and listed on the Bill of Materials:

30. OCSL will provide the Customer with a Service Delivery Manger (SDM) from time to time who will act as the single point of escalation for all matters relating to the Services and any issues that arise. Part of the role will be to understand the Customer's business and IT needs and to continually drive best practice to ensure service levels are met and exceeded.

31. Every month a service report will be produced (and subject to level of service delivery purchased) delivered ==[at the Customer's site] [by e-mail]==, which will cover the following points:

    a. Executive summary;

    b. Service improvement;

    c. Service Desk information;

    d. All changes closed per period and outstanding at end of period;

    e. Service Metrics – Availability, capacity and performance of all assets managed or monitored.

Third Party Management

32. The following shall be Third Party suppliers managed by OCSL (if any). If there are no Third Party suppliers listed, OCSL shall have no obligations under these paragraphs 32 to 36. All Third Party suppliers not specifically listed will be the sole responsibility of the Customer:

    a. [TBC]

33. If an Incident is deemed to be addressable by one of the Customer's Third Party suppliers managed by OCSL and listed above (if any) and provided that Third Party agrees to the same, OCSL will escalate and manage the Incident with the Third Party supplier through to resolution, in accordance with the Customer's contract/agreement with that Third Party supplier. OCSL shall be entitled to impose reasonable security and access policies on such Third Parties as may be required from time to time.

    For example: a support Incident is reported to the Service Desk by a user and assessed by OCSL be a fault with the Customer's own hardware. This will then be appropriately escalated to the Customer's nominated hardware maintenance supplier.

34. OCSL will then expect the Third Party supplier to resolve the Incident under the terms of the Customer's contract/agreement with that supplier and inform OCSL when the Incident has been resolved. As part of this process, OCSL will monitor the progress of the Incident through to resolution and keep the Customer appropriately informed.

35. OCSL will be responsible for:

a. Receiving IT service related Incident from the Customer to the Service Desk;

b. Logging Incidents on OCSL's call management system;

c.	If appropriate, logging an Incident with the Third Party suppliers and manage the Incident through to resolution;

d.	Providing the Customer with timely updates on the status of open Incidents;

e.	In the event of an Incident not being resolved by Third Party in accordance with the Customer's contract/agreement with that Third Party, escalating the Incident to a nominated Customer contact who will assist in finding a resolution.

36.	The Customer acknowledges that no service contract is held between OCSL and the Customer's Third Party suppliers. While OCSL is able to liaise with them on the Customer's behalf therefore, ultimate responsibility for the level of service delivered by a Third Party remains with the Customer.

Networking Appendix

CloudRoute

Definitions

Circuit: means the physical connection over which the Data Link is provided.

CloudRoute Link: has the definition set out in paragraph 4 below.

Customer Promise Date: means the agreed target date by which OCSL aim to have completed installation of the Data Link as notified to the Customer in writing.

Data Link: means the P2P Link and the CloudRoute Link together.

Data Link Fault: has the meaning given to it in the Service Levels and Service Credits Appendix.

Excused Outage: has the meaning given to it in the Service Levels and Service Credits Appendix.

Excused Data Link Outage: has the meaning given to it in the Service Levels and Service Credits Appendix.

P2P Link: has the definition set out in paragraph 1 below.

POP: means a Point Of Presence on OCSL's network.

Public Cloud Provider: means Amazon Web Services and Microsoft Cloud services (including Office365 and Azure) or such other public cloud service as OCSL shall notify to the Customer from time to time.

Service Provision – P2P Links

1. OCSL will procure the provision of two point to point data links together with supporting equipment from the Customer's premises to OCSL's POP ("P2P Link").

2. OCSL will provide bandwidth for the primary P2P Link and secondary P2P Link as set out in the Bill of Materials.

3. OCSL will provide the P2P Link within the following key services parameters**:**

Measurement	Target
Round Trip Delay	30ms
Jitter	8ms
Packet Loss	0.1%

Service Provision – CloudRoute

4. OCSL will provide a private data link from one or more OCSL POP(s) to one or more Public Cloud Providers as set in the Bill of Materials ("CloudRoute Link").

5. OCSL will provide bandwidth as set out in the Bill of Materials over the CloudRoute Link.

6. The CloudRoute Link is a multi-tenanted network. The Customer acknowledges that, whilst the line capacity is set out above, other customers of OCSL shall be entitled to use the CloudRoute Link.

Fees

7. The fees payable by the Customer to OCSL for the Data Link shall be set out in the Bill of Materials.

Warranties and Exclusions

8. OCSL shall not be responsible (for Service Credits or for any other loss, save to the extent that the same cannot be excluded by law) for the failure of the Public Cloud Provider to allow access to the public cloud, or for the failure of the telecommunications networks of which the Data Link forms a part (or access to the internet at the bandwidth advertised) for reasons beyond OCSL's reasonable control. The Customer acknowledges and accepts that the fees payable for the Data Link reflect that exclusion and, if OCSL were to take such responsibility, its fees would be higher.

Set-Up

9. Customer acknowledges and agrees that the provision of the P2P Link is the responsibility of OCSL's third party suppliers. Whilst OCSL will use its reasonable efforts to procure the provision of the P2P Link by such date as may be agreed between the parties, the actual date of installation may vary due to factors outside of OCSL's control. For the avoidance of doubt, no penalties will be due to a failure to meet such agreed date.

10. OCSL shall endeavour to fix a problem within eight hours of the Customer notifying OCSL. The Customer may claim Data Link Service Credits for any additional time as set out in the Service Levels and Service Credits Appendix.

11. Where a problem cannot be fixed within seven hours, OCSL shall escalate to its suppliers.

General

12. If an on-site visit reveals that there is no fault with the Data Link or the Data Link Fault is an Excused Outage or Excused Data Link Outage, the Customer may be charged an engineer call-out fee at a rate determined by OCSL's supplier(s).

Networking Appendix

Point to Point Data Link

Definitions

Circuit: means the physical connection over which the Data Link is provided.

Data Link: means the point to point link further described in paragraph 1 below.

Data Link Fault: has the meaning given to it in the Service Levels and Service Credits Appendix.

Excused Outage: has the meaning given to it in the Service Levels and Service Credits Appendix.

Excused Data Link Outage: has the meaning given to it in the Service Levels and Service Credits Appendix.

POP: means a Point Of Presence on OCSL's network.

Service Provision – point to point links

1.   OCSL will procure the provision of the number of point to point data links set out in the Bill of Materials together with supporting equipment from the Customer's premises to OCSL's POP ("Data Link").

2.   OCSL will provide bandwidth across the Data Link(s) as set out in the Bill of Materials.

3.   OCSL will provide the Data Link within the following key services parameters**:**

Measurement	Target
Round Trip Delay	30ms
Jitter	8ms
Packet Loss	0.1%

Fees

4.   The fees payable by the Customer to OCSL for the Data Link shall be set out in the Bill of Materials.

Warranties and Exclusions

5.   OCSL shall not be responsible (for Data Link Service Credits or for any other loss, save to the extent that the same cannot be excluded by law) for the failure of the telecommunications networks of which the Data Link forms a part (or access to the

internet at the bandwidth advertised) for reasons beyond OCSL's reasonable control. The Customer acknowledges and accepts that the fees payable for the Data Link reflect that exclusion and, if OCSL were to take such responsibility, its fees would be higher.

Set-Up

6.   Customer acknowledges and agrees that the provision of the Data Link is the responsibility of OCSL's third party suppliers. Whilst OCSL will use its reasonable efforts to procure the provision of the Data Link by such date as may be agreed between the parties, the actual date of installation may vary due to factors outside of OCSL's control. For the avoidance of doubt, no penalties will be due to a failure to meet such agreed date.

7.   OCSL shall endeavour to fix a problem within eight hours of the Customer notifying OCSL. The Customer may claim Data Link Service Credits for any additional time taken as set out in the Service Levels and Service Credits Appendix.

8.   Where a problem cannot be fixed within seven hours, OCSL shall escalate to its suppliers.

General

9.   If an on-site visit reveals that there is no fault with the Data Link or the Data Link Fault is an Excused Outage or Excused Data Link Outage, the Customer may be charged an engineer call-out fee at a rate determined by OCSL's supplier(s).

Definitions

Circuit: means the physical connection over which the Data Link is provided.

Data Link: means the MPLS link set out in paragraph 1 below.

Data Link Fault: has the meaning given to it in the Service Levels and Service Credits Appendix.

Excused Outage: has the meaning given to it in the Service Levels and Service Credits Appendix.

Excused Data Link Outage: has the meaning given to it in the Service Levels and Service Credits Appendix.

PE: means provider edge routing i.e. the router at the edge of OCSL's supplier's core network.

Service Provision – MPLS Links

1. OCSL will procure the provision of an MPLS data link together with supporting equipment between such locations as are set out in the Bill of Materials ("Data Link").

2. OCSL will provide bandwidth over the Data Link.

3. OCSL will provide the Data Link within the following key services parameters**:**

Measurement	Target
Latency	25ms
Jitter	5ms
Packet Loss	0.2%

These are average monthly targets for a one-way trip from OCSL's router edge (PE to PE).

Fees

4. The fees payable by the Customer to OCSL for the Data Link shall be set out in the Bill of Materials.

Warranties and Exclusions

5. OCSL shall not be responsible (for Data Link Service Credits or for any other loss, save to the extent that the same cannot be excluded by law) for the failure of the telecommunications networks of which the Data Link forms a part (or access to the internet at the bandwidth advertised) for reasons beyond OCSL's reasonable control. The Customer acknowledges and accepts that the fees payable for the Data Link

reflect that exclusion and, if OCSL were to take such responsibility, its fees would be higher.

Set-Up

6. Customer acknowledges and agrees that the provision of the Data Link is the responsibility of OCSL's third party suppliers. Whilst OCSL will use its reasonable efforts to procure the provision of the Data Link by such date as may be agreed between the parties, the actual date of installation may vary due to factors outside of OCSL's control. For the avoidance of doubt, no penalties will be due to a failure to meet such agreed date.

7. OCSL shall endeavour to fix a problem within eight hours of the Customer notifying OCSL. The Customer may claim Data Link Service Credits for any additional time taken as set out below:

8. Where a problem cannot be fixed within seven hours, OCSL shall escalate to its suppliers.

General

9. If an on-site visit reveals that there is no fault with the Data Link or the Fault is an Excused Outage, the Customer may be charged an engineer call-out fee at a rate determined by OCSL's supplier(s).

N3 Appendix

N3 Connectivity Services

The Services under this Agreement shall include N3 Connectivity as described below.

1. N3 CONNECTIVITY SERVICES

1.1   N3 connectivity is provided by two distinctly geographically separate links directly onto the N3 core network. Service Provider operates a failover between these circuits in an automated fashion for hard outages (e.g circuit down)

1.2   SLA & Operating periods

    (a)   Operating period is 24x7x365

    (b)   N3 connectivity SLA is a 6 hour fix

1.3   Out of Scope

    (a)   IGSOC/ LCA or other regulatory documentation required for customer to use our services.

1.4   Pre requisites

    (a)   Existing LCA, IGsoc and, SIN

1. **Definitions:**

Agreed System Time:	The number of hours in the relevant calendar month, determined using the following table:											
	Jan	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
	744	696 or 720 (during a leap year)	744	720	744	720	744	744	720	744	720	744
Annual Availability	Annual Availability % = ((24hrs x days in service year – Unscheduled Downtime) / 24hrs x days in service year) x 100											
Availability	Annual Availability or Monthly Availability as the case may be.											
Data Link Fault	means a fault, outage or Data Link downtime (other than a Planned Outage or an Excused Outage) resulting in a total loss of the Data Link where it is not possible to transmit signals in one or both directions, which has been reported to OCSL in accordance with standard fault reporting procedures.											
Data Link Fault Report	means the report of a Fault either by the Customer or OCSL that has been recorded on the call record at the Virgin Media Business Technical Support Centre in accordance with standard fault reporting procedures.											
Excused Data Link Outage	means any Data Link Fault caused by: (i) The Customer's network or system, or any part of it; or (ii) A Data Link Fault in, or any problem associated with, equipment owned and/or managed by the Customer; or (iii) Any refusal to allow OCSL, OCSL employees, suppliers, agents or subcontractors to enter into the relevant premises to diagnose or remedy any Data Link Fault; or											

	(iv) A Planned Outage; (v) An act or omission of any third party which is beyond OCSL's reasonable control which shall include, without limitation, a fibre cut; (vi) Customer failure to obtain necessary wayleaves.
Excused Outages	Means: (i) Any scheduled downtime, (including any scheduled testing) whether within the hours set out in the Agreement or, as agreed ad-hoc with the Customer; (ii) Maintenance Events as described in the Service Management Appendix; (iii) Customer- caused or third party- caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by the Supplier to perform the Services); (iv) Customer acts or omissions; or (v) Customer breach of the Agreement; or (vi) Customer failure or delay in complying with OCSL's or its supplier's (or their respective authorised representative's) reasonable instructions; or (vii) outages or disruptions attributable in whole or in part to Force Majeure Events; or (viii) Any Specific Exceptions set out in Table 1 below.
Formula	Means the relevant Availability formula set out in Table 1 below.
Monthly Availability	Monthly Availability % = ((Agreed System Time – Unscheduled Downtime) / Agreed System Time) x 100
Performance Metric	Means the metric set out below for measuring the performance of the Service set out in Table 1 below.
Planned Data Link Outage	means any Data Link downtime: (i) Scheduled by OCSL and or its supplier to carry out any preventative maintenance services; or (ii) Caused by any upgrade services in relation to the Data Link or the Virgin Media Communications Network; or (iii) Caused by any services the Customer requests or authorises including without limitation, network redesign or reconfiguration;

Trigger Event	Means the event that triggers the payment of a Service Credit, set out in the fourth column of Table 1 below;
Unscheduled Downtime	Means the time during which, according to the Performance Metric, the particular service is unavailable. Excused Outages shall not be counted as Unscheduled Downtime.

2. Provision of Service Credits

3. Any capitalised definitions used in Table 1 below shall, unless otherwise defined in this Appendix, have the definition given to them in the applicable Appendix.

4. In the event that a Trigger Event occurs, the Customer shall be entitled to the Service Credit(s) as set out in the fourth column of Table 1 below.

5. The parties acknowledge and agree that any Service Credit is a price adjustment and not an estimate of the loss that may be suffered by the Customer as a result of any decrease in Availability. However, (save for those items which cannot be excluded by law) the provision of a Service Credit shall be the Customer's sole and exclusive remedy for the consequences of any decrease in Availability and OCSL's only obligation and liability in respect of those Services (or the lack of provision or unavailability thereof).

6. In order for a Service Credit to be applied to the Customer's account, the Customer must make an application in writing to OCSL within:

    a. 30 days of becoming aware (or, if earlier, the date that the Customer should have become aware) of a decrease in Monthly Availability or failure to achieve the relevant Performance Metric which triggers a Service Credit; or

    b. In the case of services calculated using the Annual Availability Formula: 15 days of the end of the annual period following the Effective Date.

   Where an application is not made within the above period the Service Credit will be deemed to have been waived, and the Customer shall not be entitled to any other remedy (save for those remedies which cannot be excluded by law)

7. The Service Credits shall be shown as a deduction from the amount due from the Customer to OCSL in the next invoice then due to be issued for the Services. OCSL shall not in any circumstances be obliged to pay any money or make any refund to the Customer.

8. In addition to the mechanism for giving notice specified in the Agreement, the parties may, for the purposes of paragraph 6 of this Appendix, communicate by email.

9. OCSL shall not be Liable to pay any Service Credits or for any other losses, howsoever arising, where a 'Specific Exception' listed in the fifth column in Table 1 below causes the Trigger Event.

Table 1

Appendix	Formula	Performance Metric	Service Credits		Specific Exceptions
VM Appendix	Monthly Availability	"**VM**" shall have the meaning given to it in the VM Appendix. The availability of each VM will be measured by OCSL at virtual machine level. The VM will be deemed to be available if the Nimsoft monitoring agent (or such other industry standard monitoring agent as OCSL may use from time to time) is responding from the OCSL point of egress on the network.	**Trigger Event - Availability in any calendar month**	**Service Credit**	The Customer acknowledges that the purchase of Systems Monitoring is necessary in order to measure the availability of a VM.
			100% - 99.95%	0%	
			<99.95%-99.4%	5% of the monthly charge for the specific service affected, as set out in the Bill of Materials	
			<99.4%-98.9%	15% of the monthly charge for the specific service affected, as set out in the Bill of Materials.	
			<98.9%	25% of the monthly charge for the specific service affected as set out in the Bill of Materials.	

Storage Appendix	Monthly Availability	"**Data Storage**" shall have the meaning given to it in the Storage Appendix. The Data Storage will be deemed to be available if the Nimsoft monitoring agent (or such other industry standard monitoring agent as OCSL may use from time to time) reports the Data Storage as available to a server operating system.	**Trigger Event - Availability in any calendar month**	**Service Credit**	The Customer acknowledges that the purchase of Systems Monitoring is necessary in order to measure the availability of Data Storage.
			100% - 99.95%	0%	
			<99.95%-99.4%	5% of the monthly charge for the specific service affected, as set out in the Bill of Materials	
			<99.4%-98.9%	15% of the monthly charge for the specific service affected, as set out in the Bill of Materials.	
			<98.9%	25% of the monthly charge for the specific service affected as set out in the Bill of Materials.	

| **Backup Appendix** | "**Backup**" shall have the meaning given to it in the Backup Appendix.

The number of consecutive days on which Backups have failed in the calendar month. | **Trigger Event - Number of consecutive days on which Backups have failed in respect of the same server in the calendar month** | **Service Credit** | 1. The paragraphs under the section entitled 'Warranties and Exclusions' in the Backup Appendix; |
|---|---|---|---|---|
| | | 0 – 3 (inclusive) consecutive days | 0% | 2. Any bug; defect; or product failure in the backup software used by OCSL to perform Backup (or any updates thereto). |
| | | 4 - 6 (inclusive) consecutive days | 5% of the monthly charge for the specific service affected, as set out in the Bill of Materials | |
| | | 7 – 9 (inclusive) consecutive days | 15% of the monthly charge for the specific service affected, as set out in the Bill of Materials. | |
| | | 10 or more consecutive days | 25% of the monthly charge for the specific service affected as set out in the Bill of Materials. | |

Internet Appendix	Monthly Availability	"**Internet Connectivity**" shall have the meaning given to it in the Internet Appendix. Internet Connectivity will be deemed to be available if a public IP address is responding to an ICMP ping request, as measured by a Nimsoft monitoring agent (or such other industry standard monitoring agent as OCSL may use from time to time), proving connectivity through to the responding service.	**Dual Site Internet Connectivity**

Dual Site Internet Connectivity

Trigger Event - Availability in any calendar month	Service Credit
100% - 99.95%	0%
<99.95%-99.4%	5% of the monthly charge for Internet Connectivity.
<99.4%-98.9%	15% of the monthly charge for Internet Connectivity.
<98.9%	25% of the monthly charge for Internet Connectivity.

Firewall Appendix	Monthly Availability	"**Internet Firewall**" and "**Internal Firewall**" shall have the meanings given to them in the Firewall Appendix	Trigger Event - Availability in any calendar month	Service Credit	The Customer acknowledges that the purchase of Systems Monitoring is necessary in order to measure the availability of Firewall.
			100% - 99.5%	0%	
		The Internal Firewall and/or Internet Firewall shall be deemed to be available if the firewall contexts are responding to SNMP polls and passing traffic to the Nimsoft monitoring agent (or such other industry standard monitoring agent as OCSL may use from time to time) thus proving connectivity.	<99.5%-99.4%	5% of the monthly charge for the specific service affected, as set out in the Bill of Materials	
			99.4%-98.9%	15% of the monthly charge for the specific service affected, as set out in the Bill of Materials.	
			<98.9%	25% of the monthly charge for the specific service affected as set out in the Bill of Materials.	

Colocation Appendix	Monthly Availability	"**Colocation Service**" shall have the meaning given to it in the Colocation Appendix. The availability of the Colocation Service will be measured by OCSL by measuring the availability of power at the PDU. The Colocation Service shall be deemed to be available if the rack is supplied with power to at least one PDU.	Trigger Event - Availability in any calendar month	Service Credit
			100% - 99.95%	0%
			<99.95%-99.4%	5% of the monthly charge for the specific service affected, as set out in the Bill of Materials
			<99.4%-98.9%	15% of the monthly charge for the specific service affected, as set out in the Bill of Materials.
			<98.9%	25% of the monthly charge for the specific service affected as set out in the Bill of Materials.

Networking Appendix [CLOUDROUTE AND POINT TO POINT]	Annual Availability	"**Data Link**" shall have the meaning given to it in the Networking Appendix. The availability of the Data Link will be determined by OCSL's supplier.	**Trigger Event - Data Link Uptime**	**Service Credit**	1. Planned Data Link Outage 2. Excused Data Link Outage 3. Notwithstanding any provisions in this Appendix to the contrary in no event shall the total amount of Service Credits payable to the Customer in respect of the Networking Appendix in any calendar year for the Data Link exceed the total of the annual fee for the Data Link nor shall the amount of Data Link Service Credits payable to the Customer in any month exceed the total of that month's rental for the Data Link. 4. No Service Credit shall apply to non-standard solutions or customised services unless expressly agreed in writing. 5. Where the Customer has resilience built into a Data Link a Fault on a Circuit will not be counted for the purposes of Data
			<99.85% - 99.35%	5% of annual fees for the Data Link	
			<99.35% - 98.85%	10% of annual fees for the Data Link	
			<98.85 %	15% of annual fees for the Data Link	

| Networking Appendix [CLOUDROUTE AND POINT TO POINT] | Delay is measured from the point 8 hours after the Data Link Fault Report is recorded in accordance with the Service Management Appendix until the time that OCSL has recorded that the Data Link has been restored. | "Data Link" shall have the meaning given to it in the Networking Appendix.

The delay in repairing a Data Link Fault. | Trigger Event - Delay in fixing Data Link | Service Credit | 1. Planned Data Link Outage

2. Excused Data Link Outage

3. Time spent in repairing a Data Link Fault or restoring the Data Link as a result of any of the following events will not be counted as part of restoration time when calculating Service Credits:

a. Customer failure or delay in providing the necessary co-operation required by OCSL and or its supplier, including without limitation:

    i. supply of the necessary information; or

    ii. access to the relevant sites; or

    iii. supply of the necessary power or facilities; or

b. the Customer's relevant personnel cannot be contacted to |
|---|---|---|---|---|---|
| | | | 0 – 1 hour 59 minutes past | 5% of monthly fees for the Data Link | |
| | | | 2 hours to 3hours 59 mins past | 7% of monthly fees for the Data Link | |
| | | | 4 hours to 5hours 59mins past | 10% of monthly fees for the Data Link | |
| | | | >6 hours | 15% of annual fees for the Data Link | |

assisted OCSL or to confirm the Service is restored.

4. Notwithstanding any provisions in this Appendix to the contrary in no event shall the total amount of Service Credits payable to the Customer in respect of the Networking Appendix in any calendar year for the Data Link exceed the total of the annual fee for the Data Link nor shall the amount of Data Link Service Credits payable to the Customer in any month exceed the total of that month's rental for the Data Link.

5. No Service Credit shall apply to non-standard solutions or customised services unless expressly agreed in writing.

6. Where the Customer has resilience built into a Data Link a Fault on a Circuit will not be counted for the purposes of Data Link Availability if Data

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Networking Appendix [MPLS]	Monthly Availability	"**Data Link**" shall have the meaning given to it in the Networking Appendix. The availability of the Data Link will be determined by OCSL's supplier. The Data Link shall be deemed to be available if it can exchange traffic with any part of the Customer's VPN within the performance threshold set out below.	**Trigger Event - Data Link Uptime**	**Service Credit**	1. Planned Data Link Outage 2. Excused Data Link Outage 3. Notwithstanding any provisions in this Appendix to the contrary in no event shall the total amount of Service Credits payable to the Customer in respect of the Networking Appendix in any calendar year for the Data Link exceed the total of the annual fee for the Data Link nor shall the amount of Data Link Service Credits payable to the Customer in any month exceed the total of that month's rental for the Data Link. 4. No Service Credit shall apply to non-standard solutions or customised services unless expressly agreed in writing. 5. Where the Customer has resilience built into a Data Link a Fault on a Circuit will not be counted for the purposes of Data
			<99.80%	10% of monthly fees for the Data Link	

Networking Appendix [MPLS]	Delay is measured from the point 8 hours after the Data Link Fault Report is recorded in accordance with the Service Management Appendix until the time that OCSL has recorded that the Data Link has been restored.	"**Data Link**" shall have the meaning given to it in the Networking Appendix. The delay in repairing a Data Link Fault.	Trigger Event - Delay in fixing Data Link	Service Credit	1. Planned Data Link Outage
					
					2. Excused Data Link Outage
					
					3. Time spent in repairing a Data Link Fault or restoring the Data Link as a result of any of the following events will not be counted as part of restoration time when calculating Service Credits:
					
					a. Customer failure or delay in providing the necessary co-operation required by OCSL and or its supplier, including without limitation:
					
					    i. supply of the necessary information; or
					
					    ii. access to the relevant sites; or
					
					    iii. supply of the necessary power or facilities; or
					
					b. the Customer's relevant personnel cannot be contacted to

			0 – 3 hours 59 minutes past	10% of monthly fees for the Data Link	
			4 hours to 10 hours 59 mins past	20% of monthly fees for the Data Link	
			>11 hours	Additional 10% of monthly fees for the Data Link for every additional 11 hours	

assisted OCSL or to confirm the Service is restored.

4. Notwithstanding any provisions in this Appendix to the contrary in no event shall the total amount of Service Credits payable to the Customer in respect of the Networking Appendix in any calendar year for the Data Link exceed the total of the annual fee for the Data Link nor shall the amount of Data Link Service Credits payable to the Customer in any month exceed the total of that month's rental for the Data Link.

5. No Service Credit shall apply to non-standard solutions or customised services unless expressly agreed in writing.

6. Where the Customer has resilience built into a Data Link a Fault on a Circuit will not be counted for the purposes of Data Link Availability if Data

HSCN Appendix	**Monthly Availability [TBC]**	[TBC]

Resilient HSCN Connectivity

Trigger Event - HSCN Availability	HSCN Service Credit
100% - 99.99%	0%
<99.99%-[TBC]%	TBC% of the fee for the HSCN Connectivity Services.
<[TBC]-[TBC]%	TBC% of the fee for the HSCN Connectivity Services.
<[TBC]%	TBC% of the fee for the HSCN Connectivity Services.

Non-Resilient HSCN Connectivity

Trigger Event - HSCN Availability	HSCN Service Credit
100% - 99.95%	0%
<99.99%-[TBC]%	TBC% of the fee for the HSCN Connectivity Services.
<[TBC]-[TBC]%	TBC% of the fee for the HSCN Connectivity Services.
<[TBC]%	TBC% of the fee for the HSCN Connectivity

Disaster Recovery Appendix

Disaster Recovery

Definitions

Data Link: Shall be as defined in the Networking Appendix;

Data Storage: Shall be as defined in the Storage Appendix;

**Dual Site and
Internet Connectivity:**   Shall be as defined in the Internet Appendix;

DR Customer Obligations   means the obligations set out in paragraph 4 below;

**Internet Firewall and
Internal Firewall:**   Shall be as defined in the Firewall Appendix;

Recovery Time Objective: means the maximum amount of time from the Disaster in which OCSL shall resume the services specified below. In the case of the Customer, the Recovery Time Objective shall be: [   ] [hours/days/weeks/months] [OR as set out in the table attached hereto] [N.B. This must never be less than 4 hours]. ("RTO") shall be interpreted accordingly;

Recovery Point Objective: means the point in time, [hour[s]] [OR as set out in the table attached hereto] [N.B. This must never be less than 1 hour] prior to the Disaster, from which the Data Storage must be restored after a Disaster occurs. ("RPO") shall be interpreted accordingly;

Disaster: means either:

    (i)   a Force Majeure Event; or
    (ii)   any other event;
             at the Primary Data Centre which affects or, in OCSL's opinion, is likely to affect the ability of the Primary Data Centre to provide the Services under this Agreement for longer than the RTO;

VMs: Shall be as defined in the Virtual Machines Appendix;

Service Provision

1. The provisions of this Disaster Recovery Appendix shall only apply to those individual Services listed in the Bill of Materials for which 'disaster recovery' or 'DR' has been purchased. If 'disaster recovery' or 'DR' is not so listed, it shall be deemed not to have been purchased and shall not apply to those Services.

2. Provided always that the Customer has complied with each of its DR Customer Obligations, OCSL will provide a disaster recover ("DR") service as follows:

   a. OCSL shall ensure that Data Storage is replicated between two data centres (respectively, the "Primary Data Centre" and the "Secondary Data Centre") to an extent sufficient to perform its obligations under this Disaster Recovery Appendix;

   b. Where OCSL is responsible for the configuration of the Internet and Internal Firewall under a Firewall Appendix, OCSL shall provide a redundant Internal and Internet Firewall at the Secondary Data Centre;

   c. Upon a Disaster, OCSL shall:

      i. make the Data Storage available at the Secondary Data Centre within the Recovery Time Objective and from the Recovery Point Objective;

      ii. Make the VMs available at the Secondary Data Centre within the Recovery Time Objective;

      iii. Redirect network traffic to the Internet and Internal Firewall at the Secondary Data Centre;

      iv. Make the secondary Internet Connectivity available from the Secondary Data Centre

      v. Where the Customer has purchased a redundant Data Link and OCSL managed the Data Link as part of the Service Management Appendix, redirect network traffic across the redundant Data Link to the Secondary Data Centre.

3. Subject to paragraph 10 below, the Force Majeure Event provisions in the Agreement shall be deemed to be subject to OCSL's compliance with this Disaster Recovery Appendix.

DR Customer Obligations

4. The Customer shall:

   a. Purchase a data link to the Secondary Data Centre of a type (which may be a secondary Data Link or Dual Site Internet Connectivity from OCSL) and of a capacity sufficient to enable the Customer to use the Data Storage and VMs at the Secondary Data Centre as required;

   b. Purchase Dual Site Internet Connectivity from OCSL;

   c. Purchase professional services from OCSL (at the rate set out in the Bill of Materials or, if no rate is set out, at OCSL standard charges from time to time) sufficient to enable OCSL and the Customer to test the failover of the VMs; Data Storage; Internet Connectivity; and Internal and Internet Firewalls at the Secondary Data Centre once per annum (though the Customer shall, if it deems necessary, test more than once per annum);

Fees

5. The fee for DR shall be as set out in the Bill of Materials.

Warranties and Exclusions

6. OCSL shall not be responsible for any defective performance; or non-performance of DR to the extent that such defective or non-performance is caused by:

   a. A failure of the Customer to comply with its DR Customer Obligations;

   b. A failure of the Customer to purchase a data link of a type and/or capacity sufficient to enable the Customer to use the Data Storage and VMs at the Secondary Data Centre as required;

   c. A failure of the Customer to test the failover of the of the VMs; Data Storage; Internet Connectivity; and Internal and Internet Firewalls at the Secondary Data Centre once per annum;

7. OCSL makes no representation, warranty or otherwise about the time within which the Primary Data Centre will be restored to working order following a Disaster. From the date of the Disaster and until the Primary Data Centre is restored to working order, OCSL shall not be obliged the DR services at a third data centre and in the event of a Force Majeure Event at the Second Data Centre, the Force Majeure provisions in the Agreement shall apply.

8. OCSL shall not be liable for any failure to carry out or properly carry out its obligations under paragraph 2 of this Appendix to the extent to which such failure is caused or contributed to by:

   a. Virus;

   b. Maintenance Events (as defined in the Service Management Appendix);

   c. Corrupted data introduced by the Customer; or data which has become corrupted due to some act or omission on the part of the Customer or applications used by the Customer.

9. OCSL shall not be responsible for application-level disaster recovery which shall be the sole responsibility of the Customer.

10. Where:

    a. a Force Majeure Event or series of Force Majeure Events occur(s) which prevents OCSL performing its obligations under the Agreement; or prevents OCSL from carrying on its business; or causes a delay in performance; and

    b. the Force Majeure Event(s) affect the Primary Data Centre and the Secondary Data Centre;

    OCSL shall not have any liability nor any obligation to provide the Services under the Agreement which are affected thereby (including, without limitation, this Disaster Recovery Appendix) and the Force Majeure provisions in the Agreement shall continue to apply.

[RTO Table

VM / Storage	RTO

RPO Table

Storage	RPO

]

Exchange Service Appendix

Microsoft Exchange Service

Definitions

Exchange: Shall mean the Microsoft Exchange software product installed on the Customer's VM(s) at the date hereof (together with all Microsoft Windows components necessary to run such Exchange software) and as may be upgraded from time to time with OCSL's approval;

VM: Shall have the meaning given to it in the Virtual Machines Appendix;

Service Provision

1. OCSL shall use its reasonable endeavours to:

   a. manage the Exchange software;

   b. monitor the Exchange software to ensure that Exchange is running and capable of sending and receiving email traffic;

   c. Install patches to the Exchange software as may be recommended by the manufacturer from time to time;

   d. Provide third line support to the Customer for Exchange in the event that first and second line support by the Customer have failed to remedy a problem or incident affecting Exchange.

   ("the Exchange Service")

2. The provision of VMs, Storage and Backup in respect of Exchange shall be governed by the Virtual Machines Appendix; Storage Appendix and Backup Appendix respectively.

Fees

3. The fee for the Exchange Service shall be as set out in the Bill of Materials.

Warranties and Exclusions

4. OCSL shall not be responsible for providing any services in relation to:

   a. Domain name services (DNS);

   b. User administration;

   c. Microsoft Active Directory;

   d. Mailbox creation, deletion or administration;

  e. Proofpoint;

  f. Clearswift;

  g. Blackberry;

  h. Any other third-party software; plug-in; or code designed to interface with or add functionality to Exchange.

 Each of which shall be the sole responsibility of the Customer.

5. OCSL shall not be responsible if Exchange fails to send or receive email traffic; or if any other component of Exchange fails to function because of:

  a. an intended or unintended feature of;

  b. a defect or vulnerability in;

  c. malicious code in or introduced by;

  d. a Virus or malicious code in or introduced by; or

  e. a failure by the Customer or its agents to properly use or configure;

 Any of the items listed at paragraphs 4.a to 4.h above.

6. OCSL shall not be responsible if Exchange fails to send or receive email traffic; or if any other component of Exchange fails to function because of a Virus.