

# Kainos | G Cloud 10 Terms & Conditions

## KAINOS | G CLOUD 10 | TERMS & CONDITIONS

Unless otherwise specifically agreed in an Order Form any and all third party products, services or software will be supplied by the Supplier (**Kainos**) in the capacity of reseller only passing through to the Customer directly the standard supply terms of the respective third party vendor(s).

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## KAINOS PROFESSIONAL SERVICES | FRAME AGREEMENT

KAINOS REF: SOXXXXXX v1.0

This **Agreement** is made between [XXX] (**Customer**) whose registered office is at [XXX] and Choose an item. (**Kainos**) whose registered office is at Choose an item., each a **Party** and together the **Parties**.

### WHEREAS

- A. Kainos is engaged in the business of providing technology services and the Customer may from time to time require Kainos to provide certain technology services.
- B. The Parties have agreed that future engagements should be governed by and operated in accordance with pre-agreed terms and conditions, these terms and conditions are set out in this Agreement.
- C. Supplementary terms and conditions specific to particular engagements will be set out in Statements of Work (as defined below).
- D. The terms and conditions of this Agreement may be varied by the Special Conditions (if any) detailed in Section D of the relevant Statement of Work. Any variations made and detailed in Section D will be Statement of Work specific and will amend this Agreement only in respect of the Statement of Work in which the Special Condition(s) appear.
- E. This Agreement provides a mechanism for contracting for future pieces of work but nothing in this Agreement will obligate either Party to proceed under this Agreement for future work, or, limit either Party from electing an alternative contracting mechanism. This Agreement is of nil value and is binding only when read in conjunction with an executed Statement of Work.
- F. It is accepted and agreed that the Customer does not guarantee, warrant nor represent the level or volume of business that may be placed pursuant to this Agreement nor the likely value attaching to such business.
- G. This recital is intended to have legal effect.

### DEFINITIONS & INTERPRETATION

**Acceptance/Deemed Acceptance** means the date of successful completion of acceptance tests, or in the absence of the Customer notifying Kainos of any material defects, within 5 days of completion of the acceptance tests, the 6<sup>th</sup> day, or the date of first live use, whichever is sooner.

**Agreement** means collectively: (i) The terms and conditions contained within clauses 1 -33 below (inclusive of the Recital and the Definitions) (the **Terms and Conditions**); (ii) any Statement of Work (inclusive of all of its sections) when signed by both Parties; and (iii) any Change Requests validly authorised in accordance with clause 13 (when read in conjunction with an executed Statement of Work); and (iv) the authorised Specification (when read in conjunction with an executed Statement of Work).

**Application Software** means the bespoke software (if any) developed by Kainos for the Customer as part of the Services.

**Assumptions** means any reasonable assumption, facility, access or dependency on which Kainos relies for the provision of the Services or for the setting of the Price, including but not limited to those assumptions listed in the SOW.

**Confidential Information** means any information relating to the business of the disclosing Party which is not publicly available including, but not limited to, any information specifically designated by the disclosing Party as confidential; any information supplied to the disclosing Party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value in relation to the business of the disclosing Party and including specifically all information disclosed to Kainos in respect of the project known as Project Click and regardless of whether such information was disclosed prior to or subsequent to the Commencement Date.

**Contractor** means a Kainos employee or contractor assigned to the Customer to provide Services on a time and materials basis at a Man Day Rate.

**Deliverables** means the tangible results of the Services to be provided by Kainos, as specified in the SOW.

**Intellectual Property** means patents, trademarks, service marks, registered designs, applications for any of those rights, trade and business names (including internet domain names and email address names), unregistered trademarks and service marks, copyrights, database rights, know-how, rights in designs and inventions and rights of the same or similar effect or nature in each case in any jurisdiction.

**Man Day Rate** means the role specific rate (if any) specified in the SOW, payable for a 7.5 hour working day or a pro-rata apportionment of it, or where no rate is specified, Kainos' standard rates, then in force.

**Premises** means the location set out in Section B of the SOW at which Kainos personnel are required to work.

**Price** means the price agreed between the Parties, for the Services and/or Deliverables as specified in the SOW.

**Services** means the professional services to be provided under a SOW.

**Service Period** means the agreed duration of an engagement as specified in the SOW.

**Specification** means the documentation describing the intended functions and facilities of the Application Software (if any) as specified in the SOW.

**Statement of Work or SOW** means a schedule, made between the Parties, supplemental to this Agreement which details the specific work package of Services contracted for and which is binding upon execution by both Parties.

**Term** means the duration of this Agreement, which is an initial period of two (2) years from and including the Commencement Date, and which will continue thereafter until either Party serves on the other thirty (30) calendar days' notice to terminate (with or without cause).

**Third Party Software** means software used in providing the Services to the Customer belonging to a third party, which the Customer and/or Kainos has licensed. The headings in this Agreement are for convenience only and shall not affect its meaning.

## 1. GENERAL

- 1.1 From and including the Commencement Date the Customer shall have the right but not the obligation to place orders for Services and Kainos shall have the obligation to accept or decline orders for Services placed by the Customer.
- 1.2 Kainos will advise the Customer in writing (unless stated to the contrary, e-mail will satisfy the requirement for writing under this Agreement) within a reasonable period of receiving a request to provide Services as to whether or not it accepts or declines the invitation to quote for such Services.
- 1.3 Where Kainos agrees to provide Services, the Parties will complete and sign a SOW detailing engagement specific terms and conditions. No obligations arise under this Agreement regarding the provision of Services, unless and until a SOW is signed by both Parties in respect of such Services.
- 1.4 Kainos undertakes to provide the Services detailed in a signed Statement of Work, under and in accordance with the Agreement (subject to any variations listed as Special Conditions in the SOW) in consideration of payment by the Customer of the Price or the Man Day Rate(s).

## 2. KAINOS' RESPONSIBILITIES

- 2.1 Kainos undertakes to:
  - 2.1.1 perform the Services in a timely and professional manner and in accordance with good industry practice;
  - 2.1.2 assign competent and suitably qualified staff to perform the Services and furnish the Deliverables;
  - 2.1.3 procure that all personnel comply with relevant safety, security and notified on-site regulations in respect of the Premises.

## 3. CUSTOMER'S RESPONSIBILITIES

- 3.1 The Customer undertakes to:
  - 3.1.1 be responsible for ensuring the accuracy and timely authorisation of the Specification (if any) or any instructions given by it to Kainos;
  - 3.1.2 ensure that when at the Premises, Kainos personnel are provided with (the then applicable) Health and Safety law compliant working conditions;
  - 3.1.3 make necessary preparations (if any) to the Premises prior to receiving the Deliverables;
  - 3.1.4 recognise that the Price is based on the Assumptions and is responsible for fulfilling the Assumptions on which Kainos relies for the provision of the Services and/or Deliverables;
  - 3.1.5 facilitate Kainos' access to the Premises and make available appropriate staff;
  - 3.1.6 be responsible for any loss, damage or reduction in performance which in Kainos' reasonable opinion is attributable to equipment, programs and/or modifications made to the Deliverables (other than by Kainos) to the associated environment and/or infrastructure.

## 4. CONFIDENTIALITY

- 4.1 The Parties may disclose to each other Confidential Information necessary for compliance with or the discharge of their respective obligations under this Agreement. The receiving Party shall treat all such Confidential Information as confidential and shall not disclose it without the prior written consent of the disclosing Party.
- 4.2 The receiving Party shall limit the use of such Confidential Information, even within its own organisation to the extent necessary for the provision of the Services.
- 4.3 The obligation of confidence shall not extend to any part of the information which:
  - 4.3.1 has been disclosed in publicly available sources of information;
  - 4.3.2 is, through no fault of the receiving Party, disclosed in publicly available sources of information;
  - 4.3.3 is now in the possession of the receiving Party without any obligation of confidentiality;
  - 4.3.4 has been made public by a third party, otherwise than in breach of an obligation of confidence;
  - 4.3.5 has been disclosed in accordance with any statutory provision.

## 5. CONTRACTOR SERVICES

- 5.1 Where the provision of Contractor(s) forms part of the Services to be provided under a SOW, Kainos shall:
  - 5.1.1 not arbitrarily change the Contractors assigned and shall endeavour to maintain consistency of the Contractors for the Service Period. Where the replacement of any of the Contractors becomes unavoidable, Kainos will provide replacement Contractors with equivalent skills and experience;
  - 5.1.2 procure that the Contractors do not enter into any contract for goods or services on behalf of the Customer or create any liabilities against the Customer;
  - 5.1.3 discharge all and any income tax liabilities, National Insurance contributions, PRSI (or equivalent) contributions or other tax payable in respect of the Contractors in consequence of the performance of the Services.
- 5.2 Where the provision of Contractors forms part of the Services to be provided under a Statement of Work, the Customer shall:
  - 5.2.1 notify Kainos of any difficulties of a disciplinary or other nature arising in respect of any Contractor during the Service Period (the Customer shall not have authority to dismiss or otherwise discipline the Contractors);
  - 5.2.2 comply with its duties under then applicable Health and Safety at Work legislation and indemnify and keep indemnified Kainos in respect of all liabilities which Kainos may incur or sustain as a result of any failure by the Customer to so comply;
  - 5.2.3 assign such control and management of the business affairs of the Customer to the Contractors as the Customer considers necessary.

## 6. APPLICATION SOFTWARE DEVELOPMENT SERVICES

- 6.1 Where the development of Application Software forms part of the Services (unless provided in the SOW to the contrary):
- 6.1.1 Kainos will liaise with the Customer to assist in refining and defining the technical, business, functional and non-functional requirements which constitute the basis of the Specification and will develop the Application Software to the Specification;
  - 6.1.2 Where performance issues are identified Kainos will highlight these to the Customer at the earliest opportunity;
  - 6.1.3 Kainos will system test the Application Software prior to releasing it into User Acceptance Testing (**UAT**);
  - 6.1.4 Kainos will at the Customer's election and cost provide on-site personnel to assist the Customer in the installation and configuration of the Application Software into production;
  - 6.1.5 Where the Application Software comprises enhancements to a pre-existing application Kainos will (where possible) ensure that the Application Software adheres to the existing look and feel of the system, to include without limitation, the presentation of information, the naming conventions for fields, buttons;
  - 6.1.6 Where Kainos is responsible for the integration of Third Party Software into the Application Software Kainos will escalate any issues arising to the Customer.

## 7. THIRD PARTY SOFTWARE & LICENCES

- 7.1 Where the Services involve the use and/or customisation of Third Party Software provided by the Customer, the Customer will:
- 7.1.1 ensure that all relevant licences are obtained and fully paid for the periods of development and use;
  - 7.1.2 ensure that all such licence(s) is/are suitable for the intended purpose(s), and that licence terms are adhered to and will indemnify Kainos against any breach except in circumstances where such breach occurs as a result of Kainos not acting in accordance with the Customer's written instructions.
- 7.2 In relation to Third Party Software procured and/or implemented as part of the Services, Kainos will pass through the warranty (if any) offered by the Third Party Software vendor(s) and contained within the associated End User Licence Agreement (**EULA**). Kainos will typically act as a reseller of Third Party Software. Any commercial or pre-existing software proprietary to Kainos and used in the provision of the Services shall be deemed **Third Party Software**.
- 7.3 Kainos accepts no liability for delay or damage caused by any defect in the Third Party Software, whether latent or manifest and no warranty will be conferred by Kainos in respect of any Third Party Software.
- 7.4 The Customer will be responsible for obtaining at its cost such import/export licences and other consents in relation to the Deliverables, as are from time to time required (if any).

## 8. CONSULTANCY, TRAINING & OTHER PROFESSIONAL SERVICES

- 8.1 Where Consultancy, Training or other professional services forms part of the Services to be provided under a SOW, the terms and conditions governing the provision of such Services will be specified in the SOW.

## 9. HOSTING

- 9.1 Where Hosting forms part of the Services to be provided, Kainos will provide hosting services to the extent specified in the SOW. Kainos shall remedy any disruption to the hosting service (**Downtime**) as soon as reasonably practicable.
- 9.2 Unless specified to the contrary in a SOW, Kainos does not monitor and will have no liability for the content of any website hosted by it as part of the Services.
- 9.3 The Customer shall not distribute on the website any material or other information which:
- 9.3.1 infringes the Intellectual Property rights of any third party;
  - 9.3.2 is in breach of any law, statute or regulation;
  - 9.3.3 is obscene, pornographic or indecent;
  - 9.3.4 contains any virus or other computer programs intended to cause interruption and/or damage and [•] will indemnify Kainos for any breach of this clause 9.3.
- 9.4 Where an IP address is allocated as part of the Services:
- 9.4.1 The Customer acknowledges that it has no right, title or interest in such IP address;
  - 9.4.2 The IP address is not portable or transferable;
  - 9.4.3 Kainos may change the IP address at any time and the Customer shall relinquish any IP addresses upon expiry of the Term or termination of this Agreement (whichever is earlier) for any reason.

## 10. HARDWARE

- 10.1 Where the procurement of Hardware forms part of the Services provided under a SOW:
- 10.1.1 unless stated otherwise in a SOW, the Customer will be responsible for ensuring that the Hardware is properly installed and is sufficient and suitable for its purpose and that any adjustments, which may be required, are carried out expeditiously.
  - 10.1.2 the title in the Hardware shall vest in the Customer upon payment in full;
  - 10.1.3 risk in the Hardware shall pass to the Customer upon delivery;
  - 10.1.4 the Customer will be responsible for insuring the Hardware against normal insured risks including accidental damage following delivery of the hardware by Kainos;
  - 10.1.5 Kainos will not be responsible for the consequences of the operation or use of the Hardware or for replacing or repairing damage to any element of the Hardware arising as a result of a latent defect, accidental damage or otherwise, unless expressly covered by the Warranty provided in clause 17.4.

## 11. SUPPORT & MAINTENANCE

- 11.1 It is agreed that the provision of support and maintenance services are generally outside the scope of this Agreement. Where support and maintenance is required Kainos will offer the same to the Customer, subject to its then standard support terms and conditions, available upon request.

## 12. ASSUMPTIONS

- 12.1 Where the Customer is unable to provide facilities required in accordance with the SOW or access or where an identified Assumption fails, and as a result:
- 12.1.1 Kainos is unable to progress with the Services;
  - 12.1.2 Kainos must engage in additional work;
  - 12.1.3 the Services must be suspended,
- then such non-productive time and/or additional work is chargeable in addition to the Price, at the Man Day Rate(s). Kainos will endeavour to minimise any such non-productive time and shall provide the Customer as a matter of urgency with details of the facilities required or failed Assumption.

## 13. CHANGE REQUESTS

- 13.1 Either Party may raise a requested change to the Services and/or Deliverables (**Change Requests**).
- 13.2 Change Requests shall be submitted for consideration on the Change Request Form attached at Appendix 1 or, such other form as may be agreed between the Parties.
- 13.3 No change(s) shall be effective until the Change Request has been approved by both Parties (approval may be conferred by the Customer by email). Change Requests shall be priced using the Man Day Rate(s) and unless specified in the Change Request to the contrary, any sums due shall be invoiced monthly in arrears.

## 14. ACCEPTANCE TESTING

- 14.1 Acceptance tests for the Deliverables will be produced by the Customer and agreed with Kainos prior to commencement of User Acceptance Testing.
- 14.2 Upon successful completion of the acceptance tests the Deliverables shall be Accepted by the Customer.
- 14.3 If during the acceptance tests there are found to be minor deficiencies which do not materially affect the operation of the Deliverables, but which result in the acceptance tests not being fully met, then the Deliverables shall be Deemed Accepted by the Customer, on condition that Kainos remedies the outstanding deficiencies within thirty (30) calendar days of Acceptance.
- 14.4 In the event that the Deliverables fail to pass the acceptance tests due to deficiencies in the Deliverables Kainos shall take such error avoidance action as it deems necessary and re-test until such time as the Deliverables pass the acceptance tests or any modified acceptance tests (agreed between the Parties) at Kainos' expense.
- 14.5 In the event that the Deliverables fail to pass the acceptance tests due to deficiencies in facilities or data provided by the Customer, the Customer shall promptly take such remedial measures as may reasonably be requested by Kainos until such time as the Deliverables pass the acceptance tests or any modified acceptance tests which may have been agreed. Any such re-testing shall be at the Customer's expense.

## 15. PRICING & FEE STRUCTURE

- 15.1 The Price for the Services and/or Deliverables are as quoted in the SOW and may be either fixed price or time and materials.
- 15.2 The Price and the Man Day Rate(s) quoted are exclusive of VAT, Expenses, taxes and government charges, which will be invoiced in addition.

## 16. INVOICING & EXPENSES

- 16.1 Unless otherwise provided in the SOW invoices will be raised monthly in arrears and are payable within thirty (30) calendar days of issue (the **Due Date**). [The Customer shall pay invoices net of withholding tax (in accordance with prevailing legislation).]
- 16.2 The Customer will notify Kainos in writing within ten (10) calendar days of receipt of an invoice if the Customer considers such invoice incorrect or invalid for any reason.
- 16.3 Kainos reserves the right to levy interest to the outstanding balance of any overdue account under and in accordance with the [Late Payment of Commercial Debts Act 1998] [Prompt Payment of Accounts Act 1997]. In the event of persistent late payment by the Customer, Kainos may, at its election, cancel or suspend the Services until payment is received in full.
- 16.4 Reasonable expenses are due for travel, accommodation, subsistence including overnight allowances, the transport of materials as incurred and other expenses as authorised by the Customer. Expenses will be receipted and invoiced to the Customer at cost, monthly in arrears unless a per diem rate or an alternative expenses provision is provided for in the relevant SOW.
- 16.5 Where a purchase order is a procedural pre-requisite to payment of invoices by the Customer, the Customer will ensure that it has issued a purchase order to Kainos prior to the relevant invoice date specified in the SOW.

## 17. WARRANTIES

- 17.1 Where the Deliverables comprise Application Software Kainos warrants that the Application Software will perform substantially in conformance with the agreed Specification for a period of thirty (30) calendar days from Acceptance or Deemed Acceptance by the Customer.



- 17.2 Where the Deliverables comprise Third Party Software, in respect of such Third Party Software Kainos will pass through to the Customer such warranties as are contained within the accompanying EULA. Third Party Software is not warranted by Kainos.
- 17.3 In respect of Deliverables other than Application Software and Third Party Software, Kainos warrants that they will be furnished with reasonable care and skill and in accordance with standards generally observed in the industry for similar Deliverables.
- 17.4 Where the Services comprise the provision of Contractors, Kainos warrants that the Contractors shall be suitably trained and/or experienced to provide the Services.
- 17.5 Where the Services comprise the sale of Hardware by Kainos to the Customer, Kainos warrants that it has the right to sell the Hardware and shall, subject to the Customer paying the Price, confer full title to the Hardware to the Customer. Kainos will at its own expense remedy any failure of the Hardware which is covered by the associated Manufacturer's warranty and which is notified to Kainos in writing within 12 months of delivery, provided that the Customer shall at its own expense and risk return the item to Kainos for repair and collect the item following repair.
- 17.6 The Customer warrants that any specification, design or instruction given by it to Kainos will not infringe any Intellectual Property or other rights of any third party and the Customer will indemnify Kainos in respect of any related claims.
- 17.7 Each Party warrants and represents to the other that in entering into this Agreement it has not done any of the things prohibited in clause 32.1 below.
- 17.8 Except as expressly provided in this Agreement, all conditions and warranties (express or implied, statutory or otherwise) are excluded, including without limitation the implied warranties of merchantability, non-infringement, title and fitness for a particular purpose to the maximum extent permitted by the general law.

## 18. LIMITATIONS

- 18.1 Kainos will have no liability for any defect unless the same is promptly reported within the applicable warranty period referred to in clause 16 or if no warranty period applies then with all reasonable speed.
- 18.2 If a problem is found upon investigation not to be Kainos' responsibility Kainos may charge the Customer for all-reasonable costs and expenses incurred. Kainos will not be responsible for any problem arising from or caused by any modification(s) to the Deliverables any part of them by persons other than Kainos without its express prior written consent.
- 18.3 The Customer acknowledges that the Deliverables cannot be tested for every contingency and that the use of the Deliverables may not be uninterrupted or error free.
- 18.4 Notwithstanding the form, whether contract, tort, (including negligence) statutory liability or otherwise, in which any legal or equitable action may be brought under this Agreement, neither Party will be liable to the other for damages under this Agreement exceeding the Price paid by the Customer to Kainos for the Services under the SOW in respect of which the cause of action has arisen.
- 18.5 Neither Party will be liable for any indirect or consequential damages, including but not limited to those arising from business interruption or loss of profits, loss of production, loss of or corruption to data, loss of contracts, loss of operation time, wasted management time, loss of goodwill loss of savings or loss of anticipated savings, even if such Party has been advised of the possibility of the same.
- 18.6 Nothing in this Agreement will limit either Party's liability for personal injury or death caused by a Party's negligence or either Party's liability for fraud.

## 19. INTELLECTUAL PROPERTY

- 19.1 Ownership of the Intellectual Property rights arising from provision of the Services and in the Deliverables furnished, supplied and/or created by Kainos, save insofar as any elements have been supplied by or are the property of third parties, shall be determined on a case by case basis and specified in the relevant SOW.
- 19.2 All Intellectual Property rights proprietary to the Customer shall remain vested in the Customer and/or their respective licensors.
- 19.3 Nothing in this Agreement shall operate to transfer any pre-existing or independently developed Kainos Intellectual Property rights to the Customer.
- 19.4 Nothing in this Agreement shall operate to transfer any pre-existing or independently developed the Customer's Intellectual Property rights to Kainos.
- 19.5 The Intellectual Property rights in any Third Party Software shall remain vested in the Third Party Software vendor and/or its licensors and nothing in this Agreement shall operate to assign any Third Party Software Intellectual Property rights to either Party.
- 19.6 The Customer grants Kainos a non-exclusive licence to use the Customer's Intellectual Property and/or any necessary third party Intellectual Property where it is necessary to do so for the provision of the Services and/or Deliverables and for the purpose of complying with its obligations under this Agreement or under any associated SOW.

## 20. INDEMNITIES

- 20.1 Kainos will indemnify the Customer for its reasonable costs and all damages awarded by a court of competent jurisdiction or agreed by Kainos in settlement or against all costs, claims, demands, expenses and liabilities to the extent that the Application Software as used in accordance with any associated Specification infringes the Intellectual Property rights (other than patents) of any third party provided that:
- 20.1.1 The Customer makes no statement prejudicial to Kainos, save where required (and then only to the extent required) to do so by law;
- 20.1.2 such infringement is not caused or contributed to by acts of the Customer, other than the use of the Application Software in accordance with the Specification;

- 20.1.3 Kainos is promptly notified in writing of the details of the claim;
- 20.1.4 Kainos is allowed to conduct and/or settle all litigation and negotiations resulting from such claim;
- 20.1.5 the Customer gives Kainos all reasonable assistance at Kainos' expense in connection any claim.
- 20.2 If the Customer's possession or use of the Application Software is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property rights or Kainos is advised by legal counsel that such possession or use is likely to constitute such an infringement, Kainos will promptly and at its own expense and option:
  - 20.2.1 obtain for the Customer the right to continue using the Application Software;
  - 20.2.2 modify or replace the Application Software (without detracting from the functionality) so as to avoid infringement and the Customer will provide Kainos with all reasonable assistance required to exercise such options.
- 20.3 Kainos will have no liability for any claim of infringement based on the use or combination of the Application Software with equipment other than the equipment programs or data supplied by Kainos, or the Customer's refusal to use modified or replaced Application Software supplied or offered to be supplied pursuant to clause 20.2.2.
- 20.4 This clause 20 states the entire liability of Kainos with respect to infringement or alleged infringement of any third party rights of any kind by the Application Software or any part of it.
- 20.5 Without prejudice to its other rights and remedies under this Agreement, in the event of breach of any of the provisions of this clause 32 the non-breaching Party shall be entitled to recover in full from the breaching Party and the breaching Party shall on demand indemnify the non-breaching Party in full against:
  - 20.5.1 the amount of value of any such gift, consideration or commission;
  - 20.5.2 any other loss sustained by the non-breaching Party in consequence of any such breach.
- 21. REPRESENTATIONS**
  - 21.1 Unless specified in writing to the contrary in a SOW, all estimates of work, content, dates, timescales and staffing details whether given orally or in writing are included for guidance only and by way of estimate only and are not specific commitments.
  - 21.2 Any descriptive material provided by either Party is provided for information only and does not form part of this Agreement or any ancillary contract or SOW unless expressly incorporated.
- 22. NO RIGHT OF SET OFF**
  - 22.1 Neither Party will be entitled under any circumstance to set off, in whole or in part, any sums due to the other Party under this Agreement against sums due to it under this Agreement or in consequence of any dealings between the Parties.
- 23. DISCLAIMER**
  - 23.1 Kainos has used its reasonable endeavours to ensure that documentation, literature and statements produced by it are accurate, however, information may contain typographical errors, technical inaccuracies or other errors. Kainos will not be held responsible for any errors, omissions or reliance placed by the Customer on any such document, literature or statement.
- 24. NON-SOLICITATION**
  - 24.1 Neither Party will directly or indirectly solicit any employee of the other met or introduced in the course of carrying out the Services, for a period of twelve (12) months from completion of the Services. Provided that neither Party shall be restricted from employing staff who apply unsolicited in response to a general advertising or other general recruitment campaign.
- 25. NON-ASSIGNMENT**
  - 25.1 This Agreement is personal to the Parties and neither Party may assign any of its rights or delegate any of its obligations under this Agreement, whether by operation of law or otherwise, without the prior express written consent of the other Party; provided, however, that either party may assign this Agreement without such consent in connection with a merger, demerger, corporate reorganisation or asset sale. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
- 26. FORCE MAJEURE**
  - 26.1 Neither Party shall be liable for delays in the performance of the Services due to causes beyond its reasonable control, including but not limited to Acts of God, strikes or inability to obtain labour or materials.
- 27. TERM & TERMINATION**
  - 27.1 This Agreement shall endure for the Term (subject to earlier termination under and in accordance with this clause 27) and shall continue on thereafter until either Party serves on the other thirty (30) calendar days' notice to terminate, provided that if any then executed SOW is set to expire after the end of the Term, then the Term will be deemed to extend up to and including the end of the Service Period set out in that SOW (or where there is no Service Period set out, then until completion of the Services under that SOW) for the purpose of preserving the validity of that SOW only.
  - 27.2 Either Party may terminate the Services if the other Party fails to perform any other obligation required of it under this Agreement and such failure is not cured within thirty (30) calendar days from the date written notice specifying the failure was delivered. Failure to pay fees due under any executed SOW is considered a material breach.
  - 27.3 Either Party may terminate the Services with immediate effect on written notice if:
    - 27.3.1 the other Party ceases or threatens to cease to carry on its business;
    - 27.3.2 a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other Party;
    - 27.3.3 the other Party makes any arrangement for the benefit of its creditors;



- 27.3.4 the other Party goes into liquidation (save for the purposes of a genuine amalgamation or reconstruction).
- 27.4 Upon termination of the Services, Kainos will be paid all money due to it up to and including the date of termination after taking into account amounts previously paid together with:
- 27.4.1 the total value of the Services and/or Deliverables completed up to and including the date of termination; and
- 27.4.2 any cancellation charges payable to Kainos' Sub Contractors;
- 27.4.3 the cost of materials and goods ordered for the Services and/or Deliverables for which Kainos has paid or is legally bound to pay.
- 27.5 In the event of any breach of clause 32 or of any warranty or representation given in or pursuant to clause 17.7 above the non-breaching Party shall be entitled to terminate this Agreement with immediate effect.
- 27.6 Termination of the Services will not affect any rights of the Parties accrued to them up to the date of termination.

## 28. NOTICES

- 28.1 All notices shall be in writing and shall be sent by first class post to the Parties, marked for the attention of the Managing Director at the address(es) detailed in at the head of this Agreement unless otherwise provided for in the SOW. Such notice shall be deemed to have reached the Party to whom it is addressed on the next business day following the date of posting.

## 29. DATA PROTECTION

- 29.1 Each Party will comply with its respective obligations imposed under the Data Protection Act 1998 (as amended, extended and/or replaced from time to time) (the **Act**) and each Party shall indemnify, defend and hold the other Party harmless from and against any third party claims resulting from the defaulting Party's use and disclosure of personal data belonging to the other.

## 30. ADVERTISING AND PROMOTIONAL MATERIALS

- 30.1 Kainos may reference the Customer as a customer of Kainos in advertising and promotional materials.

## 31. DISPUTE RESOLUTION

- 31.1 Any dispute arising out of or in connection with this Agreement will in the first instance be referred to the Managers (named in the relevant SOW) for discussion and resolution at or by the next progress meeting or at an earlier date if so requested by either Party.
- 31.2 If the dispute is not resolved at that meeting, the dispute will be referred to Managing Director level who must meet within three (3) working days of the progress meeting, or such other date as is agreed, to attempt to resolve the dispute.
- 31.3 If the dispute remains unresolved then either Party may, at such meeting, or within seven (7) days of its conclusion request that the dispute be referred to an expert to be agreed between the Parties. If the Parties cannot agree on an expert to act such independent expert will be appointed by the President for the time being of the Law Society of Northern Ireland on the application of either Party.
- 31.4 Any person to whom a reference is made under clause 31.3 will act as an expert and not as an arbitrator. The Parties agree that the decision of the expert (which will be given in writing stating reasons) will be final and binding on the Parties.
- 31.5 Each Party will provide the expert to whom a reference is made under this clause 30 with such information as he/she may reasonably require for the purposes of his/her determination. If either Party claims any such information to be confidential to it then, provided in the opinion of the expert that Party has properly claimed the same as confidential, the expert will not disclose the same to the other Party or to any third party.
- 31.6 The costs of the reference to an expert (including the costs of any technical expert appointed by him/her) will be borne in the first instance by the Party making the reference. The expert will in his/her decision determine the liability for such costs, which decision will be final and binding on the Parties.
- 31.7 Nothing in this clause 31 will restrict, at any time while the above dispute resolution procedures are in progress or before or after they are invoked, either Party's freedom to commence legal proceedings to preserve any legal right or remedy or to protect any Intellectual Property or trade secret right.

## 32. ANTI-CORRUPTION

- 32.1 Neither Party shall:
- 32.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the other Party, to include for the purposes of this clause only any company or body associated with that Party or person employed by or on behalf of that Party (each of which for the purposes of this clause shall be a **Relevant Person**) any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to this Agreement or any other contract with any Relevant Person, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract;
- 32.1.2 enter into this Agreement or any other agreement with any Relevant Person in connection with which a financial incentive or package has been paid or has been agreed to be paid by the other Party or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such financial incentive or package and of the terms and conditions of any such agreement for the payment of such financial incentive or package have been disclosed in writing to the Relevant Person;
- 32.1.3 engage in any practice, activity or conduct that would be an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 32.1.4 defraud or attempt to defraud or conspire to defraud any Relevant Person.

### 33. GENERAL

- 33.1 Nothing in this Agreement shall be construed as creating a joint venture, fiduciary relationship, agency or partnership between Kainos and the Customer.
- 33.2 Headings are included for convenience only and shall not be otherwise construed in interpreting this Agreement.
- 33.3 No waiver of any breach of any term or condition shall constitute a waiver of any subsequent breach.
- 33.4 In the event that any term or condition is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such portion shall be deemed severed and the Agreement shall not fail in its entirety, but the surviving terms and conditions shall continue in full force and effect.
- 33.5 A reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both, from time to time and any subordinate legislation made under the statutory provision.
- 33.6 This Agreement is not made for the benefit of, nor shall any of its provisions be enforceable by, any person other than the Parties to this Agreement and their respective successors and permitted assignees.
- 33.7 No variation of this Agreement or of any of the documents referred to in them shall be valid unless it is in writing (email will not satisfy the requirement for writing under this clause 32.7) and signed by or on behalf of each Party. For the avoidance of doubt, the terms on either Party's purchase orders, invoices or other business forms are not binding on the other Party unless they are incorporated into a formal written agreement which is expressly stated to vary this Agreement, and which is signed by both Parties.
- 33.8 The terms and conditions of this Agreement will prevail over any inconsistent term or condition in, contained, or referred to in the Customer's correspondence, purchase orders, or elsewhere, or implied by trade, practice or course of dealings.
- 33.9 This Agreement and the associated SOW (if any) contains the entire understanding and agreement between the Parties and supersedes all pre-contractual written or oral agreements and/or proposals. The Parties have not relied on any representations other than those set out in the Agreement and/or associated SOW (if any).
- 33.10 The following order of precedence shall govern the interpretation of the Agreement and in the event and to the extent only of any conflict or inconsistency between the documents comprising the 'Agreement' they shall have precedence in the order listed:
- 33.10.1 the Special Conditions contained within a Statement of Work signed by both Parties; then
  - 33.10.2 the Statement of Work signed by both Parties; then
  - 33.10.3 any Change Request validly authorised in accordance with clause 13 (when read in conjunction with a Statement of Work signed by both Parties); then
  - 33.10.4 the Terms and Conditions; then
  - 33.10.5 the Appendix; then
  - 33.10.6 the Specification (if any) (as varied by any executed Change Request).
- 33.11 The provisions of this Agreement which by their very nature designed to survive the termination or expiration of this Agreement will survive termination or expiration of this Agreement, for whatever reason.

### 34. GOVERNING LAW

- 34.1 The laws of England shall govern this Agreement and the Parties shall defer to the non-exclusive jurisdiction of the Courts of England.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

## ANNEX 1 | CHANGE REQUEST

**Part A**

Kainos Entity: Choose an item.

Kainos Contact:

Change Request Reference: SO

Original Contract Reference: SO

Original Contract Name:

The Terms and Conditions of the Original Contract apply except to the extent amended in this Change Request.

**Part B**

Company Name:

Customer Reference:

Raised By:

Priority:

Date Required:

Title of Change Request:

**Part C**

[Fixed Price/T&amp;M] Cost (plus VAT and expenses, if any):

Impacted By:

Operational Impact(s):

Details of Change:

Assumptions/Dependencies:

DELETE AS APPROPRIATE:

SIGNATURE

Signed by the Customer

Signed by Kainos

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date

OR

EMAIL AUTHORISATION

This Change Request can be authorised in writing (email will suffice). Kainos will start the work detailed in this Change Request upon receipt of this authorisation.

## ANNEX 2 | DATA PROCESSING (GDPR ANNEX)

### DEFINITIONS

Customer	Means the party to whom Kainos provides services subject to an Agreement.
Data Protection Impact Assessment	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation	(i) The GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	Take the meaning given in the GDPR.
Data Loss Event	Any event that results, in unauthorised access to Personal Data held by Kainos under this Agreement, and/or actual loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
Data Subject Access Request	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
DPA 2018	Data Protection Act 2018.
GDPR	The General Data Protection Regulation (Regulation (EU) 2016/679).
Kainos Personnel	All directors, officers, employees, agents, consultants and contractors of Kainos and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.
LED	Law Enforcement Directive (Directive (EU) 2016/680).
Protective Measures	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
Sub-processor	Any third Party appointed to process Personal Data on behalf of Kainos related to this Agreement.

### 1. DATA PROTECTION

- 1.1 The parties to the Agreement acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Kainos is the Processor. The only processing that Kainos is authorised to do is listed in Schedule 1 by the Customer and may not be determined by Kainos.
- 1.2 Kainos shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 1.3 Kainos shall provide all reasonable chargeable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
  - 1.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 1.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the services defined in the Agreement;
  - 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects;
  - 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 Kainos shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - 1.4.1 process that Personal Data only in accordance with Schedule 1, unless Kainos is required to do otherwise by Law. If it is so required Kainos shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - 1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - 1.4.2.1 nature of the data to be protected;
    - 1.4.2.2 harm that might result from a Data Loss Event;
    - 1.4.2.3 state of technological development;
    - 1.4.2.4 cost of implementing any measures;
  - 1.4.3 ensure that:
    - 1.4.3.1 Kainos Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);
    - 1.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have

- access to the Personal Data and ensure that they:
      - 1.4.3.2.1 are aware of and comply with Kainos' duties under this clause;
      - 1.4.3.2.2 are subject to appropriate confidentiality undertakings with Kainos or any Sub-processor;
      - 1.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement;
      - 1.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
  - 1.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - 1.4.4.1 the Customer or Kainos has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
    - 1.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
    - 1.4.4.3 Kainos complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations);
    - 1.4.4.4 Kainos complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - 1.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless Kainos is required by Law to retain the Personal Data.
- 1.5 Subject to clause 1.6, Kainos shall notify the Customer immediately if it:
  - 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 1.5.2 receives a request to rectify, block or erase any Personal Data;
  - 1.5.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
  - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
  - 1.5.6 becomes aware of a Data Loss Event.
- 1.6 Kainos' obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.
- 1.7 Taking into account the nature of the processing and the information available to Kainos, Kainos shall provide the Customer with chargeable assistance in relation to the Controller's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - 1.7.1 the Customer with full details and copies of the complaint, communication or request;
  - 1.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 1.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 1.7.4 assistance as requested by the Customer following any Data Loss Event;
  - 1.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 1.8 Kainos shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 1.9 Kainos shall be responsible for all acts or omissions of any Sub-processor. Before allowing any Sub-processor to process any Personal Data related to this Agreement, Kainos must:
  - 1.9.1 notify the Customer in writing of the intended Sub-processor and processing;
  - 1.9.2 obtain the written consent of the Customer;
  - 1.9.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this policy such that they apply to the Sub-processor;
  - 1.9.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 1.10 The Customer may, at any time on not less than 30 Working Days' notice, revise this policy by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.11 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to Kainos amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.



SCHEDULE 1 | DESCRIPTION OF DATA & DATA PROCESSING (“INVENTORY”)

Personal Data	Data Subject(s)	Description of the data	Type of processing* (How is the data processed)	Location of processing (Geographically, incl. location for disaster recovery/back-up/mirror)	Purpose of processing (What is the processing scope)	Processor (Kainos or subcontractor)	Duration of processing
Personal Data				EEA	On the instructions of the Data Controller in respect of the services set out in the Agreement: -accessing data records to provide consultancy/development/delivery/technical support and professional services as required by the Data Controller.	The Kainos entity set out in the Agreements.	For the Service Period (or any agreed extensions to it) set out in the Agreements.

## KAINOS PROFESSIONAL SERVICES | AUTHORISATION TO PROCEED (ATP)

KAINOS REF: SOXXXXXX v1.0

This Authorisation to Proceed (**ATP**) is given by [XXX] (**Customer**) whose registered office is at [XXX] to enable Choose an item. (**Kainos**) whose registered office is at Choose an item. to provide the Services detailed in Section 2 below, from and including [XXX] (**Commencement Date**), each a **Party** and together the **Parties**. This ATP incorporates and should be read in conjunction with the Kainos Professional Services ATP Terms and Conditions.

### IT IS AGREED AS FOLLOWS:

1. This ATP is effective from and including the Commencement Date and shall continue unless or until terminated under Section 5 or Section 9 below.
2. Kainos will carry out the following services (the **Services**) between [XXX] and [XXX] [OR over an envisaged [XXX] to [XXX] week lapsed period] (the **Service Period**):
  - [XXX]
3. Kainos will charge the Customer on a time and materials basis, at the Man Day Rate of [£/€/£] per Man Day [OR in accordance with the Rate Card set out below]. The estimated charge for the provision of the Services detailed in Section 2, shall be [£/€/£] plus VAT and reasonable expenses at cost (if any) (**Indicative Cost**). The Customer will be invoiced for actual personnel utilisation which may result in an increase or a decrease to the Indicative Cost.

### RATE CARD

Role	Man Day Rate

4. The Customer acknowledges that in the provision of the Services Kainos is relying on the Customer fulfilling the following assumptions and dependencies and failure to do so may have an adverse impact on the provision of the Services, any envisaged timescale and/or the Indicative Cost:
  - (a)
  - (b)
  - (c)
5. In the event of termination of this ATP for any reason prior to completion of the Services, Kainos will provide the Services up to and including the date of termination. Kainos will be responsible for completing such Services as can be completed within the available Man Days up to the effective date of termination.
6. Customer may request that Kainos performs work additional to the Services (**Additional Work**). Kainos will endeavour to accommodate the Customer's reasonable requests. Where Kainos agrees to carry out Additional Work, the Parties will confirm the scope of and charges for the Additional Work, any related assumptions or dependencies and any special terms and conditions in a written statement (email will suffice). Receipt of an email confirmation from the Customer confirming the content of the written statement shall be deemed to constitute authorisation for Kainos to undertake the Additional Work and a variation of this ATP.
7. Invoices shall be raised monthly in arrears and shall be paid by the Customer within thirty (30) calendar days of the invoice date.
8. The Customer shall arrange access to and shall provide and procure Kainos such facilities, if any, for the performance of the Services and/or any Additional Work as are reasonably necessary. Kainos shall ensure that any personnel provided to perform the Services and/or any Additional Work comply with all reasonable rules, regulations, orders and directions as are advised by the Customer, in relation to the Customer's premises.
9. The Customer may terminate this ATP for convenience, at any time by serving on the other no less than [XXX] calendar day's written notice to terminate. From and including the date of termination no requests for Additional Work may be placed under this ATP.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

## KAINOS PROFESSIONAL SERVICES | ATP | TERMS AND CONDITIONS

### DEFINITIONS

**Confidential Information** means information which may reasonably be regarded as confidential information and which relates to the business affairs, products, services, marketing strategy, developments, trade secrets, know-how, personnel, customers and suppliers, data (including all data subject to the data protection legislation or materials, unpatented designs, drawings, software specifications, processes, testing procedures, security systems, text, diagrams, images or sounds of the same, in whatever form and however embodied or carried including in any electronic tangible or intangible medium which are supplied or in respect of which access is granted by the disclosing Party to the receiving Party pursuant to this ATP or otherwise, whether directly or indirectly.

**IPR** means intellectual property and includes without limitation, patents, trademarks, service marks, registered designs, applications for any of those rights, trade and business names (including internet domain names and e-mail address names), unregistered trademarks and service marks, copyrights, database rights, know-how, rights in designs and inventions; and rights of the same or similar effect or nature, in each case, in any jurisdiction.

**Man-Day** means 7.5 hours per day actually worked, by Kainos, Monday-Friday between the hours of 8am-6pm, excluding N.I Public Holidays.

**Man-Day Rate** means the applicable pro-rata time and materials charging rate, detailed in Section 3 for per personnel, per Man Day exclusive of VAT and Expenses (which shall be invoiced in addition where applicable). Kainos reserves the right to increase the Man Day Rate(s) set out in this ATP on an annual basis, provided that unless otherwise agreed with the Customer any such increases shall not exceed the then current rate of RPI +2%.

1. This ATP evidences the agreement and understanding of the Parties, that, Kainos is hereby authorised to commence work on the provision of the Services/Additional Work under and in accordance with the terms and conditions of this ATP.
2. Save as expressly set out in this ATP, all conditions, warranties, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise in respect of the provision and/or the results of the Services/Additional Work are hereby excluded by the Parties to the fullest extent permitted by law.
3. Each Party's liability in connection with, or in relation to, the subject matter of this ATP, whether in contract, tort under an indemnity or otherwise (a **Default**) shall be as set out in this clause 3. Each Party's entire liability for actual damages in respect of any one Default shall not in any event, except as provided in clause 5 exceed the lesser of the amount paid by Customer under this ATP (excluding VAT and expenses) or £100,000.
4. To the greatest extent permissible by law, in no event shall either be liable to the other for loss or losses of: (i) profits (actual or anticipated) (ii) revenue; (iii) business; (iv) goodwill; (v) business opportunities; (vi) potential savings whether or not the loss or losses arising out in each of the foregoing categories (i) to (vi) are direct, indirect, consequential in nature and whether or not the other Party was informed, was aware or should have been aware of the possibility of such loss arising.
5. No limitation of liability shall apply where death or personal injury is caused by either Party's negligence or the negligence of its employees, servants or agents.
6. Each Party shall and shall procure that persons associated with it or other persons who are performing services in connection with this ATP shall: (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 of the UK, and (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 of the UK.
7. This ATP may be terminated with immediate effect, without penalty, by either Party serving on the other a written notice to terminate if the other: presents a petition or have a petition presented by a creditor for its winding up (which shall not be dismissed, adjourned or otherwise rendered ineffective), or shall convene a meeting to pass a resolution for voluntary winding up, or is subject to a proposal for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition

scheme or arrangement with (or assignment for the benefit of) its creditors (other than for the purposes of a bona fide reconstruction or amalgamation) or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) or shall call a meeting of its creditors, or shall have a trustee, receiver, administrative receiver or similar officer appointed in respect of all or any of its undertakings or assets, or shall be deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or shall cease to carry on business as a going concern.

8. Termination, cancellation or expiration of this ATP shall not affect the accrued rights or liabilities of either Party.
9. Neither Party shall be liable to the other for any delay or failure to perform arising from a Force Majeure event.
10. The Parties warrant that they will duly observe and comply with all of their respective obligations under the applicable data protection legislation when carrying out obligations or exercising rights under this ATP.
11. Subject only to variations by email authorised under and in accordance with Section 6, No variation of this ATP will be effective unless evidenced in writing and signed by both Parties. This ATP supersedes all prior or contemporaneous oral or written statements, proposals, communications and representations with regard to the subject matter of this ATP. For the avoidance of doubt, the terms on either Party's purchase orders, invoices or other business forms will not supplement or alter this ATP and are not binding on the other Party as a variation to this ATP whether or not they pre-date or post-date the ATP unless they are expressly incorporated into a formal written agreement signed by both Parties which specifically states the Parties' intention to vary the ATP. Nothing in this ATP will operate to vary or invalidate any other contracts in existence between the Parties which will operate independently of this ATP under the terms and conditions agreed.
12. Neither Party will for the duration of this ATP or within twelve (12) months of its termination or expiry solicit, canvass or entice away, directly or indirectly any developer, manager or senior employee of the other. For the avoidance of doubt, recruitment arising out of any employee responding to a general recruitment campaign shall not be deemed 'solicitation', or an action giving rise to a payment of damages under this clause 12.
13. The IPR (if any) in any third party or Kainos proprietary or commercial software remains vested in Kainos and/or such third party software vendors; the IPR in pre-existing Kainos components, tools and implementation techniques vest in and will remain vested in Kainos; the IPR in Customer data and Customer developments vests in the Customer (provided that customisations made to any third party software and/or Kainos proprietary or commercial software will be made subject to the associated end user licence agreement which shall take precedence); strictly subject to the foregoing carve out, (and unless provided in any written statement pertaining to Additional Work to the contrary) the IPR in the Services/Additional Work (and the results of the Services/Additional Work) performed by Kainos exclusively for the Customer under this ATP shall vest in the Customer upon creation provided that in consideration for such assignment the Customer hereby confers on Kainos an unrestricted, non-time limited, non-exclusive licence back to Kainos to use as it sees fit, the IPR in the Services/Additional Work. Nothing in this clause 13 shall operate to restrict Kainos' ability to use for any purpose it thinks fit any know how or experience including programming tools, skills and techniques, gained or arising from the performance of the Services/Additional Work, subject to any obligations of confidentiality that it may owe to Customer.
14. For a period of two (2) years from the Commencement Date, the Parties shall not disclose or use any Confidential Information (except for the legitimate performance of the Services/Additional Work) without the prior express written consent of the other Party. This clause 14 shall not apply to: (i) Any information in the public domain other than in breach of this ATP; (ii) Information already in the lawful possession of the receiving Party before its receipt from the disclosing Party; (iii) Information obtained from a third party who

- is free to and legally entitled to divulge it; (iv) Disclosure of information which is required by law; (v) information developed or created by one Party independently of the other.
15. Where the Customer requires the provision of the Services and/or any Additional Work (to include without limitation Customer requested weekend work) outside the Man Day hours (**Overtime**), Kainos will subject to availability endeavour to accommodate the Customer's requests. Overtime will be charged (pro-rated hourly) at the applicable Man Day Rate plus ½ plus VAT and expenses (at cost).
16. This ATP is personal to the Parties and neither Party may assign any of its rights or delegate any of its obligations under this ATP, whether by operation of law or otherwise, without the prior express written consent of the other Party; provided, however, that either Party may assign this ATP without such consent in connection with a merger, demerger, corporate reorganisation or asset sale. Subject to the foregoing, this ATP shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.
17. Each Party reserves all rights which are not expressly granted under this ATP. No person who is not a party to this ATP shall acquire rights under it or be entitled to benefit from any of its terms even if that person has relied on such term or has indicated its assent to any such item.
18. Kainos reserves the right to reference the Customer as a customer of Kainos in publicity and marketing literature, the Customer has the right to object to the use of its name at any time, whether with regard to a specific use or at all, by advising Kainos in writing. Kainos will desist from any further use of the Customer's name upon receipt of such a notification from the Customer.
19. Any dispute arising out of or in connection with this ATP will in the first instance be referred to the Project Managers for discussion and resolution within seven (7) working days of the dispute being referred (or such other date as is mutually agreed). If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Head of Delivery level, who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute. If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Managing Director level who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute.
20. Nothing in this ATP shall make Kainos an employee of the Customer and the relationship between Customer and Kainos shall be one of principal and independent contractor.
21. This ATP is governed by the laws of England and the Parties submit to the non-exclusive jurisdiction of the Courts of England.

## ANNEX 1 | CHANGE REQUEST

### Part A

Kainos Entity: Choose an item.

Kainos Contact:

Change Request Reference: SO

Original Contract Reference: SO

Original Contract Name:

The Terms and Conditions of the Original Contract apply except to the extent amended in this Change Request.

### Part B

Company Name:

Customer Reference:

Raised By:

Priority:

Date Required:

Title of Change Request:

### Part C

[Fixed Price/T&M] Cost (plus VAT and expenses, if any):

Impacted By:

Operational Impact(s):

Details of Change:

Assumptions/Dependencies:

DELETE AS APPROPRIATE:

SIGNATURE

Signed by the Customer

Signed by Kainos

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date

OR

EMAIL AUTHORISATION

This Change Request can be authorised in writing (email will suffice). Kainos will start the work detailed in this Change Request upon receipt of this authorisation.



## ANNEX 2 | DATA PROCESSING (GDPR ANNEX)

### DEFINITIONS

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Data Protection Legislation	(i) The GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	Take the meaning given in the GDPR.
Data Loss Event	Any event that results, in unauthorised access to Personal Data held by Kainos under this Agreement, and/or actual loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
Data Subject Access Request	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
DPA 2018	Data Protection Act 2018.
GDPR	The General Data Protection Regulation (Regulation (EU) 2016/679).
Kainos Personnel	All directors, officers, employees, agents, consultants and contractors of Kainos and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.
LED	Law Enforcement Directive (Directive (EU) 2016/680).
Protective Measures	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
Sub-processor	Any third party appointed to process Personal Data on behalf of Kainos related to this Agreement.

## 2. DATA PROTECTION

- 1.12 The parties to the Agreement acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Kainos is the Processor. The only processing that Kainos is authorised to do is listed in Schedule 1 by the Customer and may not be determined by Kainos.
- 1.13 Kainos shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 1.14 Kainos shall provide all reasonable chargeable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
  - 1.14.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 1.14.2 an assessment of the necessity and proportionality of the processing operations in relation to the services defined in the Agreement;
  - 1.14.3 an assessment of the risks to the rights and freedoms of Data Subjects;
  - 1.14.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.15 Kainos shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - 1.15.1 process that Personal Data only in accordance with Schedule 1, unless Kainos is required to do otherwise by Law. If it is so required Kainos shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - 1.15.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - 1.15.2.1 nature of the data to be protected;
    - 1.15.2.2 harm that might result from a Data Loss Event;
    - 1.15.2.3 state of technological development;
    - 1.15.2.4 cost of implementing any measures;
  - 1.15.3 ensure that:
    - 1.15.3.1 Kainos Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);
    - 1.15.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have

- access to the Personal Data and ensure that they:
  - 1.15.3.2.1 are aware of and comply with Kainos' duties under this clause;
  - 1.15.3.2.2 are subject to appropriate confidentiality undertakings with Kainos or any Sub-processor;
  - 1.15.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement;
  - 1.15.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
- 1.15.4 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - 1.15.4.1 the Customer or Kainos has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
  - 1.15.4.2 the Data Subject has enforceable rights and effective legal remedies;
  - 1.15.4.3 Kainos complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations);
  - 1.15.4.4 Kainos complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 1.15.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless Kainos is required by Law to retain the Personal Data.
- 1.16 Subject to clause 1.6, Kainos shall notify the Customer immediately if it:
  - 1.16.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 1.16.2 receives a request to rectify, block or erase any Personal Data;
  - 1.16.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
  - 1.16.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 1.16.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
  - 1.16.6 becomes aware of a Data Loss Event.
- 1.17 Kainos' obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.
- 1.18 Taking into account the nature of the processing and the information available to Kainos, Kainos shall provide the Customer with chargeable assistance in relation to the Controller's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - 1.18.1 the Customer with full details and copies of the complaint, communication or request;
  - 1.18.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 1.18.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 1.18.4 assistance as requested by the Customer following any Data Loss Event;
  - 1.18.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 1.19 Kainos shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 1.20 Kainos shall be responsible for all acts or omissions of any Sub-processor. Before allowing any Sub-processor to process any Personal Data related to this Agreement, Kainos must:
  - 1.20.1 notify the Customer in writing of the intended Sub-processor and processing;
  - 1.20.2 obtain the written consent of the Customer;
  - 1.20.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this policy such that they apply to the Sub-processor;
  - 1.20.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 1.21 The Customer may, at any time on not less than 30 Working Days' notice, revise this policy by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.22 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to Kainos amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

SCHEDULE 1 | DESCRIPTION OF DATA & DATA PROCESSING (INVENTORY)

Personal Data	Data Subject(s)	Description of the data	Type of processing* (How is the data processed)	Location of processing (Geographically, incl. location for disaster recovery/back-up/mirror)	Purpose of processing (What is the processing scope)	Processor (Kainos or subcontractor)	Duration of processing
Personal Data				EEA	On the instructions of the Data Controller in respect of the services set out in the Agreement: -accessing data records to provide consultancy/development/delivery/technical support and professional services as required by the Data Controller.	The Kainos entity set out in the Agreements.	For the Service Period (or any agreed extensions to it) set out in the Agreements.

## KAINOS SUPPORT SERVICES | ORDER FORM

### Customer Details

Customer Name:	
Invoice Address:	
Contact Name and Number:	
Contact Email:	
Purchase Order Number:	
Kimble Code	SO

### Kainos Details

Kainos Name:	Choose an item.
Registered Office Address:	Choose an item.
Contact Name and Number:	
Contact Email:	

Supported Items	XXX software developed by Kainos XXX 3 <sup>rd</sup> Party Software <i>[Delete if not applicable]</i>
(i) Software: (ii) Infrastructure: <i>[Delete if not applicable]</i>	<i>[Detail items subject to General IaaS Support and VMs to go into Core Support]</i>
Service Period:	<i>[Insert dates or Support Services will commence on the earliest of (i) go live of the Software; (ii) the first support call received by Kainos or (iii) <i>[insert longstop date]</i> (Commencement Date) and will end <i>[12]</i> months following the Commencement Date]</i>
Service Hours:	XXX Monday to Friday excluding UK/ROI public holidays
Service Desk Number:	All Incidents must be logged by the Customer in KIM (Kainos Incident Management). The Customer may also access the Kainos Service Desk on: +44 28 9057 1200 or for ROI Customers +353 (0) 1 6369530
Kainos Service Manager:	<i>[Name] [Email Address] [Contact Telephone Number]</i>

### Support Services

- The following Support Services will be provided by Kainos in respect of Supported Items comprising Software: (a) Kainos using all reasonable endeavours to maintain the Software in good working order. *[Delete if not applicable]* (b) the provision of 3rd and 4th Line support, comprising telephone advice and assistance relating to enquiries by the Customer in respect of the use or operation of the Software during the Service Hours, for the Service Period; (c) The entering into, administration and renewal of contracts for the 3rd Party Software (if any) set out in the table below with third parties (**3rd Party Contracts**).

*[Delete 1 or 2 below or above if no software / IaaS supported items as applicable]*

- The following Support Services will be provided by Kainos in respect of Supported Items comprising Infrastructure: (a) the General IaaS Support Activities as set out below in response to Incidents raised in KIM; and (b) Core Support, as defined in the Terms and Conditions.

The Customer will promptly notify Kainos of any Incidents arising and will provide Kainos (in so far as the Customer is reasonably able) with a documented example of the Incident. Kainos will provide professional services on a time and materials basis at the relevant Man Day Rate (subject to specification of a fixed price in the Order Form) to support the Customer in their design, implementation and support of their cloud environment. These General IaaS Support Activities will be supplied in response to incidents raised in KIM or otherwise on reasonable notice in respect of a specific Customer request. The following is an indicative list of the activities with which Kainos shall assist the Customer (**General IaaS Support Activities**):

- Consultancy
  - Advice and guidance on technical design of cloud environment
  - Estimation and budgetary calculation assistance on efficient costing of potential environments
  - Analysis of potential hosted applications to assess suitability and effective architectural design
  - Advice and guidance on security and accreditation
  - Advice and guidance on data security assessment levels
  - Best practice disaster recovery design consultancy
  - Review of requirements and recommendation of infrastructure environment
  - Setup and Environment Implementation
  - Engagement with IaaS hosting provider
  - Set up and configuration of designed architecture

- Creation of access provision
- Testing of environment
- Hardening of environment
- Migration
  - Secure transfer of existing applications and data to cloud environment by either:
    - o Lift and shift of existing application and data
    - o Application installation and data transfer
  - Testing assistance of migrated environments
- Ongoing Managed IAAS Support Activities
  - Incident response and resolution including remedial actions to issues identified under Core Support
  - Implementation of changes to environment
  - Firewall and infrastructure configuration and management
  - Restore services including disaster recovery scenarios
  - Assistance in disaster recovery test events
  - Application level support service

Where Core Support is stipulated in this Order Form as applicable Kainos will supply the following support services in respect of the relevant virtual server or machine:

- Deployment of virtual servers from pre-configured templates
- Monitoring and Alerting / Event Monitoring
- Capacity monitoring
- Availability monitoring
- Anti-virus management of installed anti-virus software
- Backups management
- Operating System Security patching
- Agreed system failure process
- Help desk support
- Incident logging and tracking service
- Application of service level agreement
- Agreed escalation procedures
- Monthly standard reporting against any agreed SLAs

The Core Support is up to and including the operating system level for the server. Support for items above the operating system, can be provided under General Iaas Support Activities, where mutually agreed.

At any time during the Service Period the Customer may request Kainos to place a virtual server under Core Support. This can be completed by email or KIM exchange between the Customer and the Kainos Service Manager. The variation will be validly contracted once Kainos has issued an email or KIM confirmation to the Customer in response to a Customer request detailing the virtual server(s) to be put into Core Support. Core Support comprises the above services in respect of the relevant virtual server. The Customer may remove a virtual server from Core Support by giving Kainos thirty (30) days written notice of same (email will suffice).

The Customer will provide 1st and 2nd Line Support for all Supported Items comprising software and is responsible for fulfilling the following Customer responsibilities: (a) The Customer responsibilities set out in the Terms and Conditions and [List any additional Customer or engagement specific responsibilities].

*[Choose and complete applicable charging basis and delete the other]*

#### Fixed Price [Detail Supported Items to which this relates]

Fixed Price	£/€
Annual On-Call Service Charge	£/€
Total	£/€

#### Additional Rates

Man Day Rate	£/€
On-Call Daily Rate	£/€
On-Call Hourly Charging Rate	£/€

#### Time & Materials

Service Fee	£/€
Number of Pre-Paid Man Days	



Pre-Paid Man Day Rate	£/€
Annual On-Call Service Charge	£/€
Total	£/€

3 <sup>rd</sup> Party Software	
Contract	
Start Date	
End Date	
3 <sup>rd</sup> Party Charge	£/€

Invoicing
<i>Delete what is not relevant</i>
The Service Fee shall be invoiced at the start of the Service Period.
Pre-Paid Man Days shall be invoiced at the start of the Service Period and must be used during the Service Period. No refund or credit shall be given for unused Pre-Paid Man Days remaining at the end of the Service Period.
3 <sup>rd</sup> Party Software shall be invoiced in advance of the order for 3 <sup>rd</sup> Party Software being placed and/or before any renewal.
The Fixed Price will be invoiced on [insert details].
Additional Man Days, On-Call Support, Change Requests, Overtime, or expenses (if any) shall be invoiced monthly in arrears based on the preceding month's usage.
All invoices shall be paid by the Customer within thirty (30) calendar days of issue (the <b>Due Date</b> ).

Special Conditions

Terms & Conditions
The Kainos Support Services Terms and Conditions, which govern the provision of the Support Services set out in this Order Form, may be accessed at: <a href="https://www.kainos.com/wp-content/uploads/2018/02/Kainos-Support-Services-Terms-and-Conditions.pdf">https://www.kainos.com/wp-content/uploads/2018/02/Kainos-Support-Services-Terms-and-Conditions.pdf</a> ( <b>Terms and Conditions</b> ).
<u>By signing below, you are accepting the Terms &amp; Conditions on behalf of the Customer and confirming that you are authorised to do so.</u> Order Forms must be completed in full and returned to Kainos (with a physical or electronic copy of the purchase order) before the start of the Service Period. Kainos will not be responsible for providing Support Services where Order Forms are incomplete, unsigned or, do not have an associated purchase order number.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

## ANNEX 1 | CHANGE REQUEST

### Part A

Kainos Entity: Choose an item.

Kainos Contact:

Change Request Reference: SO

Original Contract Reference: SO

Original Contract Name:

The Terms and Conditions of the Original Contract apply except to the extent amended in this Change Request.

### Part B

Company Name:

Customer Reference:

Raised By:

Priority:

Date Required:

Title of Change Request:

### Part C

[Fixed Price/T&M] Cost (plus VAT and expenses, if any):

Impacted By:

Operational Impact(s):

Details of Change:

Assumptions/Dependencies:

DELETE AS APPROPRIATE:

SIGNATURE

Signed by the Customer

Signed by Kainos

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date

OR

EMAIL AUTHORISATION

This Change Request can be authorised in writing (email will suffice). Kainos will start the work detailed in this Change Request upon receipt of this authorisation.

## ANNEX 2 | DATA PROCESSING (GDPR ANNEX)

### DEFINITIONS

Customer	Means the party to whom Kainos provides services subject to an Agreement.
Data Protection Impact Assessment	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
Data Protection Legislation	(i) The GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.
Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	Take the meaning given in the GDPR.
Data Loss Event	Any event that results, in unauthorised access to Personal Data held by Kainos under this Agreement, and/or actual loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
Data Subject Access Request	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
DPA 2018	Data Protection Act 2018.
GDPR	The General Data Protection Regulation (Regulation (EU) 2016/679).
Kainos Personnel	All directors, officers, employees, agents, consultants and contractors of Kainos and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.
LED	Law Enforcement Directive (Directive (EU) 2016/680).
Protective Measures	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
Sub-processor	Any third party appointed to process Personal Data on behalf of Kainos related to this Agreement.

### 3. DATA PROTECTION

- 1.23 The parties to the Agreement acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Kainos is the Processor. The only processing that Kainos is authorised to do is listed in Schedule 1 by the Customer and may not be determined by Kainos.
- 1.24 Kainos shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 1.25 Kainos shall provide all reasonable chargeable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 1.25.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 1.25.2 an assessment of the necessity and proportionality of the processing operations in relation to the services defined in the Agreement;
  - 1.25.3 an assessment of the risks to the rights and freedoms of Data Subjects;
  - 1.25.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.26 Kainos shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 1.26.1 process that Personal Data only in accordance with Schedule 1, unless Kainos is required to do otherwise by Law. If it is so required Kainos shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - 1.26.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - 1.26.2.1 nature of the data to be protected;
    - 1.26.2.2 harm that might result from a Data Loss Event;
    - 1.26.2.3 state of technological development;
    - 1.26.2.4 cost of implementing any measures;
  - 1.26.3 ensure that:
    - 1.26.3.1 Kainos Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);
    - 1.26.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

- 1.26.3.2.1 are aware of and comply with Kainos' duties under this clause;
  - 1.26.3.2.2 are subject to appropriate confidentiality undertakings with Kainos or any Sub-processor;
  - 1.26.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement;
  - 1.26.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
- 1.26.4 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - 1.26.4.1 the Customer or Kainos has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
  - 1.26.4.2 the Data Subject has enforceable rights and effective legal remedies;
  - 1.26.4.3 Kainos complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations);
  - 1.26.4.4 Kainos complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 1.26.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless Kainos is required by Law to retain the Personal Data.
- 1.27 Subject to clause 1.6, Kainos shall notify the Customer immediately if it:
  - 1.27.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 1.27.2 receives a request to rectify, block or erase any Personal Data;
  - 1.27.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
  - 1.27.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 1.27.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
  - 1.27.6 becomes aware of a Data Loss Event.
- 1.28 Kainos' obligation to notify under clause 1.5 shall include the provision of further information to the Customer in phases, as details become available.
- 1.29 Taking into account the nature of the processing and the information available to Kainos, Kainos shall provide the Customer with chargeable assistance in relation to the Controller's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
  - 1.29.1 the Customer with full details and copies of the complaint, communication or request;
  - 1.29.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 1.29.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 1.29.4 assistance as requested by the Customer following any Data Loss Event;
  - 1.29.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 1.30 Kainos shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 1.31 Kainos shall be responsible for all acts or omissions of any Sub-processor. Before allowing any Sub-processor to process any Personal Data related to this Agreement, Kainos must:
  - 1.31.1 notify the Customer in writing of the intended Sub-processor and processing;
  - 1.31.2 obtain the written consent of the Customer;
  - 1.31.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this policy such that they apply to the Sub-processor;
  - 1.31.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 1.32 The Customer may, at any time on not less than 30 Working Days' notice, revise this policy by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.33 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to Kainos amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## SCHEDULE 1 | DESCRIPTION OF DATA & DATA PROCESSING (INVENTORY)

Personal Data	Data Subject(s)	Description of the data	Type of processing* (How is the data processed)	Location of processing (Geographically, incl. location for disaster recovery/back-up/mirror)	Purpose of processing (What is the processing scope)	Processor (Kainos or subcontractor)	Duration of processing
Personal Data				EEA	On the instructions of the Data Controller in respect of the services set out in the Agreement: -accessing data records to provide consultancy/development/delivery/technical support and professional services as required by the Data Controller.	The Kainos entity set out in the Agreements.	For the Service Period (or any agreed extensions to it) set out in the Agreements.



## KAINOS SUPPORT SERVICES | TERMS AND CONDITIONS

By signing an Order Form and/or contacting Kainos for Support Services, the Customer agrees that the following terms and conditions ("the Terms and Conditions") apply to and govern the delivery of Support Services. The Terms and Conditions will be effective from the earliest of Kainos receiving a signed Order Form from the Customer or the Customer contacting Kainos with a Support Services request.

### DEFINITIONS

#### 1<sup>st</sup> and 2<sup>nd</sup> Line Support

means in relation to Supported Items comprised of Software:

- (a) initial investigation and assessment of Incidents on-site (to include liaising with users to obtain the relevant detail, monitoring software and log error analysis);
- (b) prioritisation of Incidents on-site;
- (c) logging of Incidents in KIM;
- (d) providing Incident feedback to users and appropriate workarounds on how to fix incidents;
- (e) distribution of 3<sup>rd</sup> Party Software patches (if any) to End Users;
- (f) supplying details on the provision of new software, if required;
- (g) determining as much information as possible in relation to the Incident and logging/tracking the escalation of support items to 3<sup>rd</sup> and 4<sup>th</sup> Line Support where they remain unresolved;
- (h) interfacing between End User and 3<sup>rd</sup> and 4<sup>th</sup> Line Support;
- (i) monitoring Software in operation;
- (j) providing information, gathering diagnostics and implementing patches;
- (k) completing a Kainos System Problem Report form and forwarding to KIM;
- (l) closing Incidents.

#### 3<sup>rd</sup> and 4<sup>th</sup> Line Support

means in relation to Supported Items comprised of Software:

- (i) the provision of suitably qualified personnel to man the telephone support service during the Service Hours;
- (ii) the provision of temporary or permanent corrections to the Software where Incidents have been escalated from 1<sup>st</sup> and 2<sup>nd</sup> Line Support and where such correction demands the modification of source code held under version control by Kainos;
- (iii) the provision of information on known 3<sup>rd</sup> Party Software problems and available modifications or avoidance actions to 1<sup>st</sup> and 2<sup>nd</sup> Line Support;
- (iv) the provision of support documentation, tools and utilities;
- (v) the provision of consultancy services to 1<sup>st</sup> and 2<sup>nd</sup> Line Support if required;
- (vi) ensuring system documentation and software release versions are kept up-to-date to reflect any changes to the Software applied by Kainos as a result of Incidents raised;
- (vii) providing estimates on the length of time to correct non-trivial Incidents;
- (viii) developing and issuing emergency patches.

#### Change Request

means a request for a change to the Support Services or to these Terms and Conditions, for example and without limitation: an increase in the scope of the Support Services; a change to the supported "Supported Items" or "3<sup>rd</sup> Party Software" to incorporate new projects or work-streams; a request for work outside the Services Hours; a requirement to attend the Customer's premises, or a request to process the renewal of a 3<sup>rd</sup> Party Software Contract.

#### Current Release

means a supported version of the 3<sup>rd</sup> Party Software.

**Customer** means the individual or entity specified on the Order Form, or the individual or entity contacting Kainos.

#### Equipment

means the computer and operating system hardware, network and all other system hardware, of various specifications, provided, owned, controlled by or the responsibility of the Customer and maintained by or for the Customer, the adequacy of which the Customer warrants as enabling optimal performance of the Software.

#### Expenses

means travel, subsistence and other out-of-pocket expenses incurred by Kainos in respect of the provision of the Support Services. Kainos reserve the right to charge the Customer for exceptional expenses incurred,

provided that Kainos obtain the prior written consent of the Customer before incurring any such expenses. Expenses will typically relate to instances where Kainos is required to travel outside Belfast to provide the Support Services and shall be invoiced at cost.

#### Group Company

means Kainos, its Subsidiaries or Holding Company from time to time and any Subsidiary of any Holding Company from time to time.

#### Incident

means a problem, issue or query, interruption or reduction in quality or productivity with regard to the Supported Items.

#### KIM

means the Kainos Incident Management web based utility used for logging and tracking Incidents which incorporates downloadable KIM user guides.

#### Man Day

means 7.5 hours per day (pro-rata), Monday-Friday during the Service Hours, excluding Public Holidays.

#### Man Day Rate

means the pro-rata time and materials charging rate set out in the Order Form, chargeable per Man Day exclusive of VAT (which, where applicable, shall be invoiced in addition at the then prevailing rate) and exclusive of Expenses (which, where applicable, shall be invoiced in addition at cost).

#### Pre-Paid Man Day Rate

means in respect of time and material support engagements the discounted pro-rata time and materials charging rate set out in the Order Form, applicable to pre-purchased Man Days, exclusive of VAT (which, where applicable, shall be invoiced in addition at the then prevailing rate) and exclusive of expenses (which, where applicable, shall be invoiced in addition at cost).

#### Overtime Rate

means the Man Day Rate and ½ plus VAT and expenses, pro-rated for each hour (or part hour worked).

#### Service Fee

means in respect of time and material support engagements, the basic annual fee charged to cover: the provision of appropriately skilled personnel (specific to the Customer solution) to respond to requests for service within the SLA and progress appropriately; a flexible approach to use pre-paid Man Days for support, consultancy, Change Requests (not prescriptive to Incidents alone); set up and maintenance of a client environment in Kainos to facilitate Incident investigation and resolution; set up and ongoing access to KIM (Kainos Incident Management) for the Customer including Incident history and traceability until resolution; Service desk facility; monthly Incident (and Timesheet) Reporting; availability of a named Service Manager.

#### Subsidiary or Holding Company

as defined in section 1159 of the Companies Act 2006.

#### 3<sup>rd</sup> Party Software

means productised software or software developed by parties other than Kainos.

## 1. NOTIFICATION OF INCIDENTS & TARGET RESPONSE TIMES SLA

The Customer will promptly notify Kainos of any Incidents arising and will provide Kainos (in so far as the Customer is reasonably able) with a documented example of the Incident. Kainos will use all reasonable endeavours to commence investigatory and corrective work within the Target Response Times attributable to the Incident Classification set out below. Kainos will have met the Target Response Time where it has confirmed to the Customer, within the stated time, that the Incident has been received by Kainos and that a suitably qualified support analyst has begun working on the resolution of the Incident. For the purposes of calculating whether a Target Response Time has been met, the calculation of time elapsed will be suspended at the end of the Service Hours for that day and recommence at the start of the next applicable Service Hours day. Target Response Times are applicable from the date/time the incident is logged in KIM. Kainos will respond either by email, call or through KIM, or any combination of the above. Where the provision of the Support Services necessitates Kainos liaising with any 3<sup>rd</sup> Party Software vendors or infrastructure hosting service, it is acknowledged that Kainos may be constrained in its provision of the

Support Services by the absence of a then current support contract with the 3<sup>rd</sup> Party Software vendor and/or by the response times (if any) provided by the relevant third party. Kainos shall update the Customer at regular intervals, within the Service Hours, until the Incident is resolved. The Customer acknowledges that the Target Response Times detailed in the Order Form apply only to the Support Services and not to any work carried out in relation to Change Requests.

The following Target Response Times and Incident Classifications apply to the provision of the Support Services in respect of Supported Items comprising Software:

Incident	Classifications	Target Response Times
High	System not usable for any purpose	4 hours
Medium	Software malfunction impacting critical piece of functionality	8 hours
Low	Software malfunction impacting non-critical piece of functionality	2 days
Minor/Query	Routine advice and guidance request, documentation deficiency or usability suggestion	5 days
Change Request	Request for change or enhancement to software	5 days
Problem	Investigation of underlying root cause of incident	5 days
Service Request	Standard change that does not require approval, for example, password reset, set up of new KIM user	5 days

The following Target Response Times and Incident Classifications apply to the provision of the Support Services in respect of Supported Items comprising Infrastructure:

Priority / Severity	Classification	Business Impact	Target Response Time
High	VM not usable for any purpose.	Multiple users unable to transact business. Business customers affected.	1 hour
Medium	VM malfunction impacting critical piece of functionality.	Multiple users impacted. Single user unable to transact business.	4 hours
Low	Malfunction impacting non-critical piece of functionality.	Business continues but multiple users inconvenienced. Single user inconvenienced.	1 day
Minor / Query	Routine advice and guidance request, documentation deficiency or usability suggestion.	No impact on business. Cosmetic modification. Information request.	2 days
Service Request	Standard change that does not require approval.	No impact on business. Password reset. Set up of new KIM user.	2 days
Change Request	Request for change or enhancement.	No impact on business.	2 days

## 2. LOCATION

Unless otherwise stated in the Order Form, the Support Services will be provided from Kainos Belfast premises. Kainos shall, at the Customer's request and where necessary for the provision of the Support Services, attend the Customer's site. Attendance at the Customer's site will be undertaken subject to the terms and conditions governing the provision of on-site attendance set out in clause 15 of the Terms and Conditions.

## 3. WARRANTY

Kainos warrants that the Support Service will be carried out with reasonable care and skill and in a timely, workmanlike and cost-effective manner using qualified staff sufficiently familiar with the functions and operation of the Supported Items and its implementation and application

by Kainos. Save as expressly set out in these Terms and Conditions, all conditions, warranties, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise in respect of the Support Services and any deliverables are hereby excluded by the parties to the fullest extent permitted by law including (without limitation) as to the condition, quality, performance, merchantability or fitness for purpose of the Support Services or any part of them. Kainos will not be liable to remedy any problem arising from or caused by any modification, (whether by way of alteration, deletion, addition or otherwise) made to any part of the Software (including data structure) or the Equipment by persons other than Kainos, without its express prior written consent. Each Party warrants and represents to the other that on entering into this contract and on an ongoing basis for the duration of this contract it (and its senior officers, employees and sub-contractors) has not been investigated, prosecuted or convicted of any offence under The Bribery Act 2010.

## 4. LIABILITY

The parties' liabilities in connection with, or in relation to, the Support Services carried out under these Terms and Conditions, whether in contract, tort or otherwise (a "Default") are exhaustively defined in these Terms and Conditions. Each party's entire liability for actual damages in respect of any one Default shall not in any event (except for death or personal injury caused by the negligence of either party, or its employees, to which no limit shall apply) exceed the lesser of the amount paid by the Customer under the associated Order Form (excluding VAT and expenses) or £100,000 To the greatest extent permissible by law, in no event shall either Party be liable to the other for loss or losses of:

- (i) profits (actual or anticipated);
- (ii) revenue;
- (iii) Business;
- (iv) goodwill;
- (v) business opportunities;
- (vi) potential savings;
- (vii) loss of production;
- (viii) loss of or corruption to data;
- (ix) loss of operation time,

whether or not the loss or losses arising out in each of the foregoing categories (i) to (ix) are direct, indirect, consequential in nature and whether or not the other party was informed, was aware or should have been aware of the possibility of such loss arising. The Customer is responsible for the consequences of any use of the Support Services.

## 5. 3<sup>RD</sup> PARTY SOFTWARE

Kainos does not accept liability for and is not responsible for problems arising with any 3<sup>rd</sup> Party Software, whether latent or manifest.

## 6. TERM & TERMINATION

These Terms and Conditions shall endure for the Service Period set out in the Order Form and any agreed extensions to it, subject only to termination under clause 7 (termination for insolvency/corruption). Where an Order Form has expired and Kainos continues to provide the Support Services to the Customer, the provision of such Support Services will be strictly subject to these Terms and Conditions. Notwithstanding the limitations of liability set out in these Terms and Conditions, Kainos reserves the right to levy the full outstanding balance, if any, of the Service Charge and/or Fixed Price (together with any outstanding Charges) in the event of early termination during the Service Period ("Early Termination Charge") which will be paid by the Customer within thirty (30) calendar days of invoice. The parties agree that the Early Termination Charge represents a genuine pre-estimation of the loss that Kainos will suffer as a result of termination of the provision of Support Services prior to the end of the Service Period and does not constitute a penalty.

## 7. TERMINATION FOR INSOLVENCY/CORRUPTION

The provision of the Support Services will come to an end with immediate effect, without penalty, by either party serving on the other a written notice to terminate if the other:

- (i) presents a petition or have a petition presented by a creditor for its winding up (which shall not be dismissed, adjourned or otherwise rendered ineffective), or shall convene a meeting to pass a resolution for voluntary winding up, or is subject to a proposal for a voluntary

arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors (other than for the purposes of a bona fide reconstruction or amalgamation) or shall enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation) or shall call a meeting of its creditors, or shall have a trustee, receiver, administrative receiver or similar officer appointed in respect of all or any of its undertakings or assets, or shall be deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or shall cease to carry on business as a going concern; or

- (ii) is (or any senior officer or employee of that Party is) convicted of an offence under The Bribery Act 2010.

## 8. RIGHTS FOLLOWING TERMINATION

Termination, cancellation or expiration of these Terms and Conditions shall not affect the accrued rights or liabilities of either party.

## 9. FORCE MAJEURE

Neither party shall be liable to the other for any delay or failure to perform arising from a force majeure event.

## 10. DATA PROTECTION

The parties will duly observe and comply with all of their respective obligations under the then current and applicable data protection legislation when carrying out obligations or exercising rights in respect of the Support Services.

## 11. VARIATIONS

Subject only to variations authorised under and in accordance with the Kainos Change Request procedure and/or set out in the Special Conditions section of an Order Form, no variation of these Terms and Conditions will be effective unless evidenced in writing and signed by both parties. These Terms and Conditions supersede all prior or contemporaneous oral or written statements, proposals, communications and representations. For the avoidance of doubt, in relation to the provision of the Support Services, the terms on either party's purchase orders, invoices or other business forms are not binding on the other party whether or not they pre-date or post-date these Terms and Conditions unless they are expressly incorporated into a formal written agreement signed by both parties which specifically states the parties' intention to vary these Terms and Conditions.

## 12. NON-SOLICITATION

Neither Party will for the duration of the Service Period set out in the Order Form or within (12) twelve months of its termination or expiry solicit, canvass or entice away, directly or indirectly any developer, manager or senior employee of the other. The parties agree that breach of this clause 12 would involve the other in significant expense and will entitle the other to liquidated damages of an amount equivalent to three (3) months of the basic annual salary (calculated as at the termination date) of the employee so solicited, invoiced on the leaving date and paid within thirty (30) calendar days of issue.

## 13. ASSIGNMENT

These Terms and Conditions are personal to the parties and neither party shall, without the prior written consent of the other assign, transfer, charge or deal in any other manner with the Terms and Conditions save that Kainos may on written notice to the Customer assign, transfer or novate its rights and obligations under these Terms and Conditions to any Group Company. The Terms and Conditions are not made for the benefit of, nor shall any of their provisions be enforceable by, any person other than the parties to the Order Form.

## 14. THIRD PARTIES

Kainos reserves the right to engage third party consultants/contractors in the performance of the Support Services but such sub-contracting will not relieve Kainos from its obligations under these Terms and Conditions.

## 15. ON-SITE ATTENDANCE

Unless otherwise provided in the Order Form, the following terms apply to on-site attendance: i) on-site attendance shall be billed at the Man Day Rate and shall be undertaken subject to available Man Days; ii) Expenses

associated with on-site attendance shall be billed in addition at cost, to include travel, accommodation (where an overnight stay is necessary) and subsistence; iii) time spent on-site in the provision of the Support Services outside the Service Hours shall be charged at the Overtime Rate; iv) travel time is chargeable, provided that travel time shall be drawn down at the Man Day Rate and not the Overtime Rate irrespective as to the time that such travel is undertaken.

## 16. CUSTOMER RESPONSIBILITIES

The Customer shall be responsible for: (i) providing 1<sup>st</sup> and 2<sup>nd</sup> Line Support and for supporting any software with which the Software interacts; (ii) supplying any 3rd party VPN software required to remotely access the Customer's platforms; (iii) providing remote access to Kainos or required third parties to its test and production environments as required; (iv) ensuring in advance of Kainos entering into any 3<sup>rd</sup> Party Software Contract for the benefit of the Customer that the terms and conditions of such 3rd Party Contract(s) (or subsequent renewals) are acceptable to it and sufficient for its purposes; (v) providing timely authorisation for the renewal of 3<sup>rd</sup> Party Contracts; (vi) the consequences on the provision of the Support Services where the Customer elects not to renew support for any 3<sup>rd</sup> Party Contract (or does not communicate its decision regarding renewal to Kainos on time or at all); (vii) securing the consent of any 3<sup>rd</sup> Party Software vendor (where the Customer has entered into a support agreement for 3<sup>rd</sup> Party Software directly or a stated 3<sup>rd</sup> Party Software Contract) for Kainos to use such 3<sup>rd</sup> Party Software in the provision of the Support Services and/or to receive the support services from the 3<sup>rd</sup> Party Software vendor directly for the benefit of the Customer; (viii) ensure at Customer's expense that Kainos is adequately licensed to use the software and/or hardware installed and/or required in the supported environment to the extent necessary to enable Kainos to provide the Support Services; (ix) the appointment of a member of its staff ('the Support Representative') to act as the principal point of contact between the Parties who will act as the first point of contact with Kainos Support Services in the resolution of Incidents and other support requirements; (x) ensuring that the Software and the Equipment are used in a proper manner by competent trained technical employees only or by persons under their supervision; (xi) notifying Kainos promptly if the Supported Items are not operating correctly; (xii) co-operating to a reasonable extent with the Kainos in the diagnosis, investigation and correction of any fault in the Supported Items; (xiii) making available to Kainos free of charge all information, facilities and services reasonably required by Kainos to enable Kainos to perform the Support Services including, without limitation, computer runs, core dumps, print-outs, data preparation and access to the Customer's staff, the Supported Items and the Equipment; (xiv) keep full security copies of the Software and of the Customer's databases and computer records in accordance with good computing practice; (xv) provide permission to Kainos in respect of Customer's third party cloud services and / or environments on the basis of the minimum privileges required by Kainos to complete the relevant Support Services; (xvi) ensure that all Support Service requests are formally logged; (xvii) provide suitable office accommodation and services, including telephone, facsimile and photocopying facilities to Kainos staff where there is a requirement for Kainos to work on-site; and (xviii) in the case of Supported Items comprising infrastructure, ensure continuance of the cloud environment relevant to the Supported Items and Kainos access to same. Customer acknowledges that failure to discharge its responsibilities may impact the price, the provision of the Support Services and/or the timely resolution of Incidents.

## 17. 3<sup>RD</sup> PARTY SOFTWARE

Where the procurement of and/or support for 3rd Party Software forms part of the Support Services to be provided by Kainos:

- (i) Kainos will, at the Customer's request, effect renewal of support for 3rd Party Software at;
- (ii) where the Customer wishes to effect any renewal of the 3rd Party Software Kainos will supply the Customer with details of its charges to effect such renewal plus VAT and expenses (if any) which shall be invoiced in addition) and the Contract the Change Request procedure will be used to contract any such renewal;
- (iii) invoices in respect of the 3rd Party Charge(s) (if any) shall be raised in advance of the order for the 3rd Party Software Contract being placed and/or prior to any renewal. Kainos is not responsible for placing an order with, or for effecting the renewal of any 3rd Party



Software Contract until payment of the associated 3rd Party Charge has been received from the Customer;

- (iv) where Kainos has (in accordance with the Customer's instructions) placed an order for the 3rd Party Software Contract the Customer shall be responsible for paying the 3rd Party Charge(s) plus VAT and expenses (if any) in full, irrespective of any change in the Customer's requirements or the subsequent termination of Support Services;
- (v) Kainos is responsible for passing to the Customer the benefit and burdens of the 3<sup>rd</sup> Party Contracts ONLY and nothing in these Terms and Conditions will operate to make Kainos: (a) responsible for furnishing the Customer with any additional benefits or services under any 3<sup>rd</sup> Party Software Contract which is not provided for in the 3<sup>rd</sup> Party Software Contract; (b) liable for any act, omission or breach of contract by the third party contractor(s); (c) responsible for the provision of any services to be provided under the 3<sup>rd</sup> Party Software Contract by the third party vendor or by the Customer; (d) responsible for the consequences of early termination of any 3<sup>rd</sup> Party Contract or the Customer declining to use a Current Release of the 3<sup>rd</sup> Party Software, for whatever reason. Kainos' responsibilities in respect of the 3<sup>rd</sup> Party Software Contracts will expire upon the earliest of expiry of the relevant 3<sup>rd</sup> Party Contract (without subsequent renewal) and/or expiration, termination and/or cancellation of the Support Services. Where Kainos is providing support for 3<sup>rd</sup> Party Software and/or entering into any 3<sup>rd</sup> Party Contract it is acknowledged that the support term for the 3<sup>rd</sup> Party Software and/or the start of the 3<sup>rd</sup> Party Contract will commence on dispatch of the 3<sup>rd</sup> Party Software and/or the Start Date set out in the 3<sup>rd</sup> Party Contract(s) section of the Order Form and may not be synchronised with the Service Period.

## 18. MARKETING

Kainos reserves the right to reference the Customer as a customer of Kainos in publicity and marketing literature, the Customer has the right to object to the use of its name at any time, whether with regard to a specific use or at all, by advising the SM in writing. Kainos will desist from any further use of the Customer's name upon receipt of such a notification from the Customer.

## 19. CHARGES

Where the Support Services are being undertaken on a Fixed Price basis, unless otherwise stated in the Order Form the Fixed Price does not include the provision of the Support Services in respect of, resulting from and/or due to:

- (i) any defect error or other problem resulting from any modifications, made to the Software made by any person other than Kainos and its sub-contractors without Kainos' prior written approval;
- (ii) any defect, Incident, error or other problem in any version of the 3<sup>rd</sup> Party Software other than a Current Release in respect of which there is a current 3<sup>rd</sup> Party Software Contract in place;
- (iii) incorrect use of the Software or operator error;
- (iv) the Equipment, the Customer's incorrect operational or environmental conditions, media or consumables, or other equipment and programs used in conjunction with the Software or to any other reason external to the Software;
- (v) the Customer's data management, data file copying and distribution, system housekeeping, administration and other routine operational activities;
- (vi) system training;
- (vii) the management and/or implementation of any Software release;
- (viii) support of the Software during anything other than normal operation;
- (ix) the provision of documentation of system procedures;
- (x) the support of networks, operating systems, databases, data cabling and electrical cabling;
- (xi) site go live support;
- (xii) retrieval of report information from system data;
- (xiii) management of generic system problems;
- (xiv) management or co-ordination of system fault calls with external service providers;
- (xv) system applications rebuilds or disc rebuilds;
- (xvi) on-site evidence collection;
- (xvii) system failure due to criminal or malicious or accidental damage;
- (xviii) installation and configuration of software supplied but not produced by Kainos.

If at the request of the Customer Kainos agrees to provide any Support Services in respect of any of the exclusions referred to in this clause 19 (but it is confirmed that Kainos is under no obligation to do so) Kainos will endeavour to undertake the work as soon as reasonably practicable under and in accordance with the Change Request procedure. Subject to the Change Request procedure, Kainos will endeavour to accommodate Customer requests for the provision of the Support Services outside the stated Service Hours (although it is under no contractual obligation to do so). Customer should provide Kainos with at least two (2) working days' notice of any such requirement.

Where the Support Services are provided on a Time and Materials basis they are subject to the number of available Man Days. Kainos is not responsible for providing the Support Services where there are no (or no sufficient) available Man Days. If the number of available Man Days is deemed insufficient to provide the Support Services Kainos shall advise the Customer in writing (email will suffice). The Customer will be invoiced for actual staff utilisation; however, each support call will be subject to a minimum ½ hour charge. Kainos will furnish the Customer with a monthly report detailing the preceding month's utilisation and the remaining available Man Days.

## 20. LATE PAYMENT & RATE REVIEWS

If any sum payable to Kainos is in arrears for more than thirty (30) calendar days after the due date, Kainos reserves the right without prejudice to any other right or remedy to:

- (i) charge interest on such overdue sum on a day to day basis from the original due date until paid in full at an annualised rate of 2% above Bank of Ireland base lending rate in force from time to time; and/or
- (ii) suspend the provision of the Support Services on fourteen (14) days prior written notice.

The Customer will notify Kainos in writing within five (5) days of receipt of an invoice if the Customer considers such invoice incorrect or invalid for any reason failing which the Customer will raise no objection to any such invoice and shall make full payment in accordance with it. Kainos reserves the right to increase the Man Day Rate and/or the charges for the provision of the Support Services set out in the Order Form, during the Service Period, on an annual basis, PROVIDED THAT unless otherwise agreed with the Customer, any such increases shall not exceed the then current rate of RPI + 2%.

## 21. DESCRIPTION OF CUSTOMER

Where the Customer is entering into a support contract with Kainos in order to ensure that the Supported Items is supported and maintained for the benefit of the Customer and wholly owned subsidiaries within the Customer's group (it being contemplated that the Supported Items will be used by the Customer group wide), it is agreed between the parties that any warranties, benefits and limitations of liability (whether liquidated or non-liquidated) in and or under these Terms and Conditions apply only as between the Customer and Kainos. The inclusion of wholly owned subsidiaries and/or references to the Customer group in the description of the Customer is solely to ensure that the right to avail of any benefit of the Support Services, as provided to the Customer and not that such subsidiaries or group companies can avail directly of the Support Services. In all other respects, any wholly owned subsidiary or group company is to be treated as a third party under these Terms and Conditions.

## 22. OVERTIME & ON-CALL SUPPORT

Any time spent by Kainos in the provision of the Support Services outside the Service Hours will be undertaken subject to the following terms and conditions governing the provision of out-of-hours support. Work to be undertaken outside the Service Hours (depending on its nature and duration) will be classified by Kainos (in advance of it being undertaken) as either "Overtime" or "On-Call Support". (i) Overtime will be charged at the Overtime Rate. (ii) On-Call Support comprises two charging elements: (a) A flat daily charge for the provision of the On-Call Support facility which will be billed at the "On-Call Daily Rate" set out in the Order Form plus VAT and expenses (if any); and (b) An hourly charge for each call made during an On-Call Support period which will be billed at the "On-Call Hourly Charging Rate" set out in the Order Form, per hour, plus VAT and expenses (if any). (iii) Calls made during an On-Call Support period will be logged at a minimum of two (2) hours irrespective of their duration subject to the following: (a) Once the two (2) hour minimum

period has been triggered, the Customer will not be charged for any additional calls made (if any) within that two (2) hour period; (b) Where a call (or calls) exceed(s) the initial (2) hour period, or where additional calls are received after the initial two (2) hour period has expired then, subject to 23 (iii) (c) below, further time will be charged at a minimum of one (1) hourly increments. Once the one (1) hour minimum period has been triggered, the Customer will not be charged for any additional calls made (if any) within that one (1) hour period. (c) In the event that more than one (1) hour has passed from the end of the last call received then the minimum call charge will revert to the standard two (2) hour minimum period.

### 23. CHANGE REQUESTS

During the Service Period, the Customer may ask Kainos to undertake Change Requests. Change Requests shall be undertaken in accordance with the following procedure:

- (i) Change Requests are submitted via KIM by completing an electronic version of the Change Request Form which will be provided to you by the Kainos Services Manager;
- (ii) Change Requests may be submitted and authorised by email. Receipt of an email confirmation from the Kainos Services Manager in response to a Change Request raised by the Customer confirming that the Change Request is accepted, or receipt of an email confirmation from the Customer verifying the content of a Change Request Form which has been raised by the Kainos Services Manager will constitute the Change Request and will constitute a variation to the Support Services and these Terms and Conditions; (iii) unless stated to the contrary in the Change Request Form, Change Requests will: (a) be undertaken on a Time and Materials basis; (b) typically be charged at the Man Day Rate, SAVE THAT where larger project(s) are to be undertaken (in excess of twenty (20) Man Days) and which requires project management, consultancy and/or technical architect resources in addition to software engineers, then the rate(s) for such additional resources will be agreed between the parties on a case by case basis; (c) be billed monthly in arrears.

### 24. HARDWARE PURCHASE

Where the purchase of hardware by Kainos on behalf of the Customer forms part of the Support Services, the specification, quantity, price and terms relating to support for the hardware will be set out in the Special Conditions section of the Order Form (the "Hardware"). The risk of loss or damage to the Hardware will pass to the Customer on the date of delivery of Hardware to the Customer. The Customer is responsible for ensuring that the Hardware listed is suitable for its requirements. If the Customer has any complaints upon taking delivery of the Hardware it must notify Kainos immediately of its complaint with as much information as possible and provide Kainos with a detailed written statement of its complaint (email will suffice) within five (5) working days of the date of delivery. Kainos is entitled to assume that the Customer is completely satisfied with Hardware if it has not received any such written statement within the specified time frame. The Customer is solely responsible for: (i) ensuring that once it has taken possession of Hardware that it is in good working order; (ii) ensuring that Hardware is used only in the normal course of business and in accordance with the manufacturer's instructions and/or guidelines and in compliance with all health and safety legislation; (iii) liaising directly with the manufacturer to address any operating issues with the Hardware (unless it has a current support contract for the Hardware in place with Kainos). The Customer shall indemnify Kainos from and against any loss, damage or injury to people or property caused by the Hardware or its use, except for death or personal injury caused by Kainos' negligence.

### 25. HARDWARE SUPPORT

Where support of Hardware by Kainos forms part of the Support Services, unless otherwise stated:

- (i) support for the Hardware will commence at the start of the Service Period, even if the Hardware has not been at the time fully set-up, installed or connected to a network;
- (ii) Kainos will advise the Customer of the need for renewal and the associated charges in advance of the renewal date (where charges are set out in the Order Form, these are stated exclusive of VAT and expenses (if any) which shall be invoiced in addition);
- (iii) where the Customer wishes to effect any renew of Hardware support the Change Request procedure should be used;

- (iv) invoices in respect of the Hardware support shall be raised in advance of the order for Hardware support being placed and/or prior to any renewal. Kainos is not responsible for placing an order with, or for effecting the renewal of any Hardware support until payment of the associated charges have been received from the Customer;
- (v) where Kainos has (in accordance with the Customer's instructions) placed an order for Hardware support the Customer shall be responsible for paying the charge(s) plus VAT and expenses (if any) in full, irrespective of any change in the Customer's requirements or the subsequent termination of Support Services;
- (vi) Kainos is responsible for passing to the Customer the benefit and burdens of the Hardware support contracts ONLY and nothing in these Terms and Conditions will operate to make Kainos: (a) responsible for furnishing the Customer with any additional benefits or services under any Hardware support contract which is not provided for in the Hardware support contract; (b) liable for any act, omission or breach of contract by the third party contractor(s); (c) responsible for the provision of any services to be provided under the Hardware support contract by the third party vendor or by the Customer; (d) responsible for the consequences of early termination of any Hardware support contract or the Customer declining to renew a Hardware support contract, for whatever reason.

Kainos' responsibilities in respect of any Hardware support contract will expire upon the earliest of expiry of the relevant Hardware support contract (without subsequent renewal) and/or expiration, termination and/or cancellation of the Support Services. Where Kainos is providing support for Hardware and/or entering into any Hardware support contract on behalf of the Customer it is acknowledged that the support term for the Hardware support contract and/or the start of the Hardware support contract will commence on dispatch of the Hardware and/or the Start Date set out in the Special Conditions section of the Order Form relating to the provision of Hardware support and may not be synchronised with the Service Period.

### 26. ESCALATION

The following order of escalation will apply to the resolution of issues arising out of or in connection with the provision of the Support Services:

- (i) The Customer shall refer any issues arising: (a) in the first instance to the Services Manager whose contact details are set out in the Order Form; with escalation to: (b) the Head of Support Services; (c) with escalation to the Managing Director.

### 27. COMPLIANCE WITH LAWS

Each Party shall and shall procure that persons associated with it or other persons who are performing services in connection with this Order Form shall (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 of the UK, and (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 of the UK.

### 28. LAW & JURISDICTION

These Terms and Conditions are governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England.





## UKCloud Ltd G-Cloud 10 Terms and Conditions

Last updated: 15th May 2018

This Agreement and any documents referred to in it (this “**Agreement**”) contains the terms and conditions that govern Your access to and use of the Services (as defined below) and is an agreement between UKCloud Ltd (company number: 07619797) whose registered office is at Hartham Park, Hartham, Corsham, Wiltshire, SN13 0RP, England (“**UKCloud**”, “**We**,” “**Us**,” and “**Our**”) and You or the entity You represent (“**You**” and “**Your**”).

### 1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement:

“**Authorised Users**” mean Your employees, agents and independent contractors who You authorise to use the Services.

“**Call Off Contract**” means the G-Cloud 10 Call Off Contract and Order Form, following the provisions of the G-Cloud 10 Framework Agreement, incorporating this Agreement, the applicable Service Definitions, the Systems Interconnect Security Policy and any other referred document.

“**Content**” means software (including third party software), data, documents, text, video, audio or other content.

“**Digital Marketplace**” means the UK government maintained online catalogue of G-Cloud services.

“**G-Cloud 10 Framework Agreement**” means the clauses of framework agreement RM1557.10, together with the framework schedules under which We are authorised to provide certain cloud services.

“**Order Form**” has the meaning given in Schedule 6 of the G-Cloud 10 Call Off Contract “Glossary and Interpretations”.

“**N3**” means the Health and Social Care ICT Network which will be replaced by HSCN.

“**Parties**” means You and Us collectively, each being a “**Party**”.

“**Service Credits**” means the sums attributable to Our failure to deliver any part of the Services in accordance with the service levels, as specified in the applicable Service Definition.

“**Service Definitions**” means the documents setting out the descriptions of the applicable Services, any terms and conditions specific to such Services, and the applicable service levels offered in respect of such services, as available in the Digital Marketplace and incorporated into the applicable Call Off Contract.

“**Services**” or “**Service**” means the services ordered by You as set out in the Order Form, the Digital Marketplace, and the applicable Service Definitions.

“**Systems Interconnect Security Policy**” is the formal top level security document that identifies which aspects of security are within the remit of Our security officer, and which aspects of security are within the remit of Your security officer.

“**UKCloud Content**” means any Content We (or Our sub-contractors) make available to You in connection with the Services.

“**Third Party Content**” means Content made available to You by any third party in conjunction with the Services.

“**Virus**” means anything or devices (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); steal or redirect data in bad faith or attempt to do the same; or adversely affect the User experience, including worms, malware, ransomware, Trojan Horses, viruses and other similar things or devices.

“**Your Content**” means Content that You or any Authorised User run on, cause to interface with, or upload to, the Services, under Your account.

### 2. Use of the Services

2.1 We grant You a non-exclusive, non-sub-licensable, non-transferrable, revocable license during the term of this Agreement to:

- Access and use the Services You've ordered solely in accordance with this Agreement; and
- Copy and use the UKCloud Content solely to the extent reasonably required for Your permitted use of the Services.

2.2 You may access and use the Services You have ordered in accordance with this Agreement, and We will provide such Services in accordance with the applicable Service Definitions.

2.3 We will obtain sufficient rights to third party software to perform the Services, and grant You a nonexclusive, revocable license to use third party software included in the Services solely to the extent necessary to receive and use the Services during the term of the agreement.

2.4 The Services shall be supplied in conformity with the Service Definitions and entries set out in the Digital Marketplace.

2.5 You will be responsible for any third-party licences and licence costs which are not included in the relevant Service Definition.

2.6 Additional ad-hoc and irregular services may be agreed between the Parties. If required these services will be provided by Us according to the terms of this Agreement.

2.7 You will comply with all laws, rules, and regulations applicable to Your use of the Services, including those specified in the Service Definitions and in the Systems Interconnect Security Policy.

### 3. Your Content and Data

3.1 For the purposes of this clause 3, the terms “data controller”, “data processor”, “personal data”, and “processing” shall have the meanings given in the Data Protection Act 2018 (“DPA”). References to Your personal data include the personal data of the Authorised Users.

3.2 You shall own all rights, title and interest in and to all of Your Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Content.

3.3 We shall not be responsible for backing up Your Content unless this is either a feature included as part of the Service or where it is not, You have explicitly identified this as a requirement either via the Order Form or by raising a support ticket with Us and this having been accepted. Where backup is chosen, We shall follow Our backup procedures for Your Content as set out in such Service Definition.

3.4 Where We process any personal data on Your behalf when performing Our obligations under this Agreement, You shall be the data controller and We shall be a data processor and:

- You shall ensure that You are entitled to transfer the relevant personal data to Us so that We may lawfully use, process and transfer such personal data in accordance with this Agreement on Your behalf;
- You shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- We shall process the personal data only in accordance with the terms of this Agreement, the DPA, any lawful instructions given by You from time to time, and in accordance with the terms of the G- Cloud 10 Framework Agreement and Call Off Contract.

3.5 We may collect, store and use Your personal data for the following purposes:

- To provide You with Services that You request and to fulfil Our contractual obligations to You; and
- To provide information about Our Services.

### 4. Authorised Users

4.1 In relation to the Authorised Users, You undertake that:

- Each Authorised User shall keep a strong and secure password for her or his use of the Services, which shall be kept confidential.
- You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and comply with the UKCloud Systems Interconnect Security Policy. In the event of any such unauthorised access or use, You shall promptly notify Us by email to [security@ukcloud.com](mailto:security@ukcloud.com)
- You are responsible for all activities that occur under Your account, regardless of whether the activities are undertaken by You, Your employees or a third party (including Your contractors or agents) and, except to the extent caused by Our breach of this Agreement, We are not responsible for unauthorised access to Your account. You will ensure that all Authorised Users comply with Your obligations under this Agreement. If You become aware of any violation of Your obligations under this Agreement

by an Authorised User, You will immediately terminate such Authorised User's access to the Services.

## **5. Your Obligations**

### **5.1 You shall:**

- (a) Not access, store, distribute or transmit any Viruses, or any material during the course of Your use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; or is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity, and We reserve the right, without liability to You, to disable Your access to any material that breaches the provisions of this clause.
- (b) Not access all or any part of the Services in order to build a product or service which competes with the Services (or any part of them) or attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Agreement.
- (c) Comply with Your responsibilities as set at Appendix B, section 6 of this Agreement ("Your Responsibilities").
- (d) Provide Us with all necessary co-operation in relation to this Agreement and all necessary access to such information as We may require in order to render the Services, including but not limited to, security access information and configuration services.
- (e) Be solely responsible for procuring and maintaining Your network connections and telecommunications links from Your systems to Our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

## **6. Payment**

- 6.1 You will pay Us the applicable fees and charges for use of the Services as described in the applicable Service Definition. All fees and charges shall be payable in pounds sterling, are non-cancellable and non-refundable, and are exclusive of value added tax.
- 6.2 We calculate and bill Our fees for the Services on a monthly basis (as agreed pursuant to an Order Form), unless otherwise described in the applicable Service Definition, and You will pay Our invoices for such fees within 30 days after the date of such invoices. We may also require payment on different terms for ad hoc services or irregular purchases, in which case We shall inform You prior to Your agreeing to receive these services or purchases.
- 6.3 Interest shall be payable on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time), at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 6.4 All sums payable to Us under this agreement will become due immediately upon termination of the Agreement.

## **7. Suspension**

- 7.1 We may suspend Your or any Authorised User's right to access or use all or any part of the Services immediately upon notice to You if We determine that:
  - (a) You are late in making any undisputed payments hereunder by more than the notice period stipulated in the Order Form; or
  - (b) Your or an Authorised User's use of the Services:
    - (i) Creates a security risk to the Services or any third party; or
    - (ii) May adversely impact the Services or the systems or Content of any other of Our customers.
- 7.2 If We suspend Your right to use or access all or part of the Services:
  - (a) You remain responsible for any applicable fees and charges for any Services to which You continue to have access, as Well as applicable data storage fees and charges, and fees and charges for in- process tasks completed after the date of suspension;
  - (b) You will not be entitled to any Service Credits under the Service Definitions for any period of suspension.

## **8. Term and Termination**

- 8.1 This Agreement will commence in accordance with the Commencement date of the Call Off Contract (the "**Effective Date**"), and shall remain in force for the term of the Call Off

Contract until terminated by You or Us in accordance with this clause.

- 8.2 You may terminate this Agreement for convenience by providing Us with written advance notice as set out in the applicable Order Form.

- 8.3 On termination of this Agreement for any reason:

- (a) All rights granted to You under this Agreement shall immediately terminate;
- (b) You will immediately return or (at Our request) destroy all UKCloud Content in Your possession;
- (c) You are responsible for removing all Content by 23:59:59 on the Effective Date of termination. If Content is not removed by this time We reserve the right to charge for any Content not removed, or for retrieving and returning your content, and may destroy or otherwise securely dispose of any of Your Content in Our possession.
- (d) The accrued rights of the Parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, including without limitation clauses 1 (Definitions), 3 (Your Content and Data), 6 (Payment), 8 (Term and Termination), 9 (Intellectual Property Rights), and 10 (Indemnity) shall not be affected or prejudiced.

## **9. Intellectual Property Rights**

- 9.1 As between You and Us, You own all right, title, and interest in and to Your Content. Save as expressly provided in this Agreement, We shall obtain no rights from You or Your licensors to Your Content. You hereby consent to Us and Our sub-contractors Using Your Content to provide the Services.
- 9.2 You represent and warrant to Us that You or Your licensors own all right, title, and interest in and to Your Content, and that You have all rights in Your Content necessary to grant the rights contemplated by this Agreement.
- 9.3 You acknowledge and agree that We and/or Our licensors own all intellectual property rights in the Services. Except as expressly stated herein, this Agreement does not grant You any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 9.4 You shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties, and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of Our Content, or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Our Content.

## **10. Indemnities**

- 10.1 You shall, at all times during and after the term of this Agreement, indemnify Us and keep Us indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Us arising from or in connection with:
  - (a) Your breach of this Agreement or violation of applicable law by You or any Authorised User;
  - (b) Your or any Authorised Users' use of the Services (including any activities under Your UKCloud account and use by Your personnel); or
  - (c) Your Content or the combination of Your Content with other applications or content, including any claim involving alleged infringement of third-party rights by Your Content or use thereof.
- 10.2 We shall notify You of any such third-party claim, allow You to conduct all negotiations and proceedings and provide You with such reasonable assistance as is required by You (at Your cost), and not, without prior consultation with You, make any admission relating to such claim or attempt to settle it, provided that You consider and defend the claim diligently, using competent counsel and in such a way as not to bring Our reputation into disrepute.

## Appendix A – Free Trial Agreement

*[these clauses are to be used only for the purposes of free trials of the Services]*

### UKCloud Customer Agreement for Free Trial of UKCloud Services

This UKCloud Customer Agreement and any documents referred to in it (this “Agreement”) contains the terms and conditions that govern Your access to and use of the Services (as defined below) and is an agreement between UKCloud Ltd (company number: 07619797) whose registered office is at Hartham Park, Hartham, Corsham, Wiltshire, SN13 0RP, England (“UKCloud”, “We,” “Us,” and “Our”) and You or the entity You represent (“You” and “Your”).

#### 1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

“**Authorised Users**” mean Your employees, agents and independent contractors who You authorise to use the Services. “**Content**” means software, data, documents, text, video, audio or other content.

“**Digital Marketplace**” means the UK government maintained online catalogue of G-Cloud services.

“**Free Trial**” means Your ability to access Our Services from the date that the free trial is set up, for a fixed duration and value, as described on the applicable Service Definition.

“**Parties**” means You and Us collectively, each being a “Party”.

“**Service Definitions**” means the documents setting out the descriptions of the applicable Services, any terms and conditions specific to such Services, and the applicable service levels offered in respect of such services, as set out in the Digital Marketplace.

“**Services**” or “**Service**” means the services ordered by You as set out in the Order Form, the Digital Marketplace, and the applicable Service Definitions.

“**Systems Interconnect Security Policy**” is the formal top level security document that identifies which aspects of security are within the remit of Our security officer, and which aspects of security are within the remit of Your security officer.

“**Trial Credits**” mean the fixed value of the Free Trial to the equivalent of £500 of Service consumption, priced in the applicable Service Definition, unless the value of the Trial Credit is stated differently in the Service Definition.

“**Virus**” means 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); steal or redirect data in bad faith or attempt to do the same; or adversely affect the User experience, including worms, malware, Trojan Horses, viruses and other similar things or devices.

“**Your Content**” means Content that You or any Authorised User run on, cause to interface with, or upload to, the Services, under Your account.

#### 2. Use of the Services

2.1 We grant You a non-exclusive, non-transferrable, revocable licence during the term of this Agreement to:

- (a) Access and use the Services You’ve ordered solely in accordance with this Agreement; and
- (b) Copy and use Our Content solely to the extent reasonably required for Your permitted use of the Services.

2.2 Free Trials are available to Our new and existing customers, and will be limited to products that You have not already purchased from Us, unless You are testing a significantly different use-case or, if You are a partner, testing a solution for a different customer.

2.3 You may participate in the Free Trial for the duration described in the Service Definition from the date that Service is made available to You by Us. The Free Trial will terminate when the duration of the Free Trial is ended, or the Trial Credits are consumed, whichever is the soonest. Unused consumption of either the Trial Credits or the term of the Free Trial cannot be rolled forward to any other agreement, without Our express agreement.

2.4 Service Credits do not apply to Free Trials, and any issues will be communicated by Us to You using reasonable endeavours.

2.5 You will be responsible for any Third Party Licence costs which are not included in the applicable Service Definition.

2.6 You will comply with all laws, rules, and regulations applicable to

Your use of the Services, including those specified in the Service Definitions and in the Systems Interconnect Security Policy.

#### 3. Your Content and Data

3.1 For the purposes of this clause 3, the terms “data controller”, “data processor”, “personal data”, and “processing” shall have the meanings given in the Data Protection Act 2018 (“DPA”). References to Your personal data include the personal data of the Authorised Users.

3.2 You shall own all rights, title and interest in and to all of Your Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Content.

3.3 We shall not be responsible for backing up Your Content unless this is either a feature included as part of the Service or where it is not, You have explicitly identified this as a requirement and this having been accepted. Where backup is chosen, We shall follow Our backup procedures for Your Content as set out in such Service Definition.

3.4 Where We process any personal data on Your behalf when performing Our obligations under this Agreement, You shall be the data controller and We shall be a data processor and:

- (a) You shall ensure that You are entitled to transfer the relevant personal data to Us so that We may lawfully use, process and transfer such personal data in accordance with this Agreement on Your behalf;
- (b) You shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- (c) We shall process the personal data only in accordance with the terms of this Agreement, the DPA, and any lawful instructions given by You from time to time.

3.5 We may collect, store and use Your personal data for the following purposes:

- (a) To provide You with Services that You request and to fulfil Our contractual obligations to You; and
- (b) To provide information about Our Services.

#### 4. Authorised Users

4.1 In relation to the Authorised Users, You undertake that each Authorised User shall keep a strong and secure password for their use of the Services, which shall be kept confidential.

4.2 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Us by email to [security@ukcloud.com](mailto:security@ukcloud.com).

4.3 You are responsible for all activities that occur under Your account, regardless of whether the activities are undertaken by You, Your employees or a third party (including Your contractors or agents) and, except to the extent caused by Our breach of this Agreement, We are not responsible for unauthorised access to Your account.

#### 5. Your Obligations

5.1 You shall:

- (a) Not access, store, distribute or transmit any Viruses, or any material during the course of Your use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; or is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity, and We reserve the right, without liability to You, to disable Your access to any material that breaches the provisions of this clause;
- (b) Not access all or any part of the Services in order to build a product or service which competes with the Services (or any part of them) or attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Agreement;
- (c) Comply with Your responsibilities as set out within Appendix B, section 6 of this Agreement (“Your Responsibilities”);
- (d) Warrant that all data imported by You into Our Services is being processed on behalf of a UK Public Sector entity, or supports the delivery of services to the UK Public Sector;
- (e) Provide Us with all necessary co-operation in relation to this Agreement and all necessary access to such information as We may require in order to render the Services, including but not limited to, security access information and configuration services;
- (f) Be solely responsible for procuring and maintaining Your

network connections and telecommunications links from Your systems to Our data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet.

## **6. Term**

- 6.1 This Agreement will commence when the Free Trial has been made available to You by Us, and shall remain in force for the duration described in the Service Definition.
- 6.2 This agreement will automatically terminate when set duration of the Free Trial expires, or when the Trial Credits have been consumed, whichever is the soonest.
- 6.3 Your trial service will be terminated unless You choose to enter into a further agreement with UKCloud, which will be subject to charges as described in the applicable Service Definition and be governed by Our standard terms and conditions.

## **7. Suspension**

- 7.1 We may suspend Your or any Authorised User's right to access or use all or any part of the Services immediately upon notice to You if We determine that:
- (a) Your or an Authorised User's use of the Services creates a security risk to the Services or any third party; or
  - (b) May adversely impact the Services or the systems or Content of any other of Our customers.

## **8. Intellectual Property Rights**

- 8.1 As between You and Us, You own all right, title, and interest in and to Your Content. Save as expressly provided in this Agreement, We shall obtain no rights from You or Your licensors to Your Content. You hereby consent to Us and Our sub-contractors Using Your Content to provide the Services.
- 8.2 You represent and warrant to Us that You or Your licensors own all right, title, and interest in and to Your Content, and that You have all rights in Your Content necessary to grant the rights contemplated by this Agreement.
- 8.3 You acknowledge and agree that We and/or Our licensors own all intellectual property rights in the Services. Except as expressly stated herein, this Agreement does not grant You any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 8.4 You shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties, and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the UKCloud Content, or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the UKCloud Content.

## **9. Indemnities**

- 9.1 You shall, at all times during and after the term of this Agreement, indemnify Us and keep Us indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by Us arising from or in connection with:
- (a) Your breach of this Agreement or violation of applicable law by You or any Authorised User;
  - (b) Your or any Authorised Users' use of the Services (including any activities under Your UKCloud account and use by Your personnel); or
  - (c) Your Content or the combination of Your Content with other applications or content, including any claim involving alleged infringement of third-party rights by Your Content or use thereof.
- 9.2 We shall notify You of any such third-party claim, allow You to conduct all negotiations and proceedings and provide You with such reasonable assistance as is required by You (at Your cost), and not, without prior consultation with You, make any admission relating to such claim or attempt to settle it, provided that You consider and defend the claim diligently, using competent counsel and in such a way as not to bring Our reputation into disrepute.

## **10. Limitation of Liability**

- 10.1 The following provisions set out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents, sub-contractors and licensors) to You in respect of:
- (a) Any breach of this Agreement howsoever arising;

- (b) Any use made by You of the Services or any part of them; and
- (c) Any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

10.3 Nothing in this Agreement excludes Our liability for:

- (a) Death or personal injury caused by Our negligence; or
- (b) Fraud or fraudulent misrepresentation; or
- (c) Any other act or omission, liability for which may not be limited under applicable law.

10.4 Subject to clause 10.5, We shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- (a) Loss of profits of business; or
- (b) Depletion of goodwill or similar losses; or
- (c) Loss of anticipated savings; or
- (d) Any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

10.5 Subject to clause 10.1, Our total liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited £1000 under this Agreement for the Service which gave rise to the claim during the term of this Agreement.

## **11. Confidentiality**

11.1 You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to You by Us or Our agents, and any other confidential information concerning Our business or Our products and services which You may obtain.

## **12. General**

12.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.

## Appendix B – Using Our Services

Unless otherwise specified in the applicable Service Definition, this Appendix describes how our Services will be used:

### 1. Onboarding

- 1.1 Both Parties will complete a profile which details the roles and responsibilities expected of both parties. We will then deploy and configure basic managed VMs from a standard build template to which You can then upload or migrate applications.
- 1.2 A number of videos, help guides, manuals and FAQs are available to help train and instruct users so that they are up and running quickly and easily. These are available within the Knowledge Centre, accessed via Our portal.
- 1.3 You will be assigned a Customer Success Manager (CSM) to provide any assistance required during the first 90 days of the service.

### 2. Data Migration

- 2.1 In many circumstances, We can help facilitate a bulk migration to the platform using local data import. This is priced on a time-and-materials basis from Our SFIA rate card.
- 2.2 We can also help facilitate a bulk migration to the platform using offline data ingest and extraction — please ask Us for details.

### 3. Service Management

- 3.1 A comprehensive secure online portal will provide the most common service management functionality and address most requirements.
- 3.2 We will allocate a Technical Account Manager (TAM) to provide You with an assigned point of contact. The TAM will provide additional assistance with reporting and incident escalation, at all times following Our ISO 20000- certified ITIL-based process framework.
- 3.3 For organisations that require a managed service, We have a mature and active partner ecosystem that can provide value-added services such as consultancy and ongoing custom managed services. We will make an introduction on request.

### 4. Service Constraints

- 4.1 We will adhere to the following in terms of maintenance windows:

**“Planned Maintenance”** means any pre-planned disruptive maintenance to any of the infrastructure relating to the service. Planned Maintenance activity may result in periods of degradation or loss of availability depending on the nature of the activity required. In such cases, We shall provide affected customers with at least fourteen (14) days' advance notice of the Planned Maintenance.

If during Planned Maintenance there is a loss of availability outside the scope described in the planned maintenance notification to the Service, an SLA event will be triggered.

**“Emergency Maintenance”** means any urgent maintenance required to prevent or mitigate against any event compromising the infrastructure relating to the Service. Whenever possible, UKCloud shall: a) provide affected customers with at least six (6) hours' advance notice and b) carry out the emergency maintenance between the hours of 00:00 and 06:00 (UK local time) Monday to Friday or between the hours of Saturday 00:00 to 06:00 (UK local time) on Monday, (including bank holidays) unless there is an identified and demonstrable immediate risk to customer environment(s). Emergency Maintenance may result in periods of degradation or loss of availability depending on the nature of the activity required.

If during Emergency Maintenance there is a loss of availability to the Service, an SLA event will be triggered. This time will be excluded from the availability calculation but will be included in monthly reporting related to the Service.

### 5. Technical Requirements

- 5.1 You will require appropriate network connectivity such as DDoS-protected internet access or accredited connectivity such as a government secure network to our cloud platforms. Connectivity via the DDoS-protected internet, a government secure network (PSN, Janet or N3/HSCN) or private leased line is available but may incur additional charges if the hosting of CPE routers is required.
- 5.2 Where they are required, You are responsible for procuring and managing appropriate devices or software to meet the requirement for data security over the various forms of connectivity.

### 6. Your Responsibilities:

- 6.1 You are responsible for:
  - (a) The control and management of access and responsibilities for end users.
  - (b) Advanced OS security hardening specific to application requirements.
  - (c) Deployment and management of non-core OS components such as IIS, Apache and Active Directory.
  - (d) User account creation, administration and assignment of permissions.
  - (e) Deployment of patches facilitated by Our patch repository, and sourcing and deployment of all non-core OS and non-critical patches.
  - (f) Timely testing of application and data following any changes to the managed VM.
  - (g) Management of AV policies, exclusions and quarantine.
  - (h) Clean-up of virus infestations.
  - (i) System administration tasks.
  - (j) Creation of systems documentation.
  - (k) Configuration management of OS and application components.
  - (l) Disaster recovery and business continuity.
  - (m) Security management and protective monitoring of OS and applications.
  - (n) Optimisation of VM resources.
  - (o) You are also responsible for compiling with the Our Security Operating Procedures (SyOPs) and other information assurance requirements as specified in Our System Interconnect and Security Policy (SISP) and associated accreditation documentation sets.
  - (p) You are also responsible for accrediting the OS and application environment.

### 7. Termination

- 7.1 At the point of termination, all customer data, accounts and access will be permanently deleted, and will not be able to be subsequently recovered or restored.

### 8. Costs

- 8.1 Unless otherwise stated in the applicable Service Definition, there are no termination costs for this Service. Customers are responsible for extracting their own data from the platform if required.
- 8.2 We may make an additional charge for transferring data out of the Service.

### 9. Offboarding

- 9.1 Prior to terminating the contract, You are able to transfer your data out of the Service (for example using Our API to retrieve data).
- 9.2 When You terminate Your agreement with Us, We ensure all of Your data are deleted securely.

## Appendix C – Microsoft Licensing

*[to be used only when You obtain Microsoft software services directly from Us]*

1. All licensing relating to the operating system must be provided by Us, unless You have a dedicated server. You may provide Your own application licensing, but you must complete and provide a Microsoft Mobility Agreement to Us.
2. You shall not remove, alter, cover or obscure any trademarks, trade names, service marks, logos or brands, copyright notices, patent numbers or any other statements or symbols of ownership from software, or do so in respect of any media supplied to You by Us on which any software is loaded.
3. You shall not copy, alter, modify, adapt, translate, create derivative works of, distribute, rent, lease, sublicense, transmit, sell all or part of the software or do so in respect of any media on which the software is loaded.
4. To the extent permitted by applicable law, We make no representations or express or implied warranties in relation to the software services, and disclaim all express or implied warranties, including without limitation:
  - (a) Any implied warranties of merchantability, and fitness of the software services for a particular purpose;
  - (b) Any liability on the part of Microsoft, or its suppliers, for any direct, indirect or consequential damage arising from the software services.
5. We, or a third party on Our behalf, will provide technical support for the software services. Microsoft will not provide direct support to You.
6. You agree that We may be obliged to pass limited details about You to Microsoft in the event that Your software service consumption exceeds the £GB Sterling equivalent of US\$1000 per month, or if Microsoft elects to undertake an audit of software service consumption
7. In the event that You have failed to pay for the correct number of end users, or other necessary software licenses, You will promptly obtain the correct amount, and hold Us harmless against any consequential liabilities.
8. You agree that the software services are not fault tolerant and are not guaranteed to be error free or to operate uninterrupted. No rights are granted to You to use the software services in any application or situation where failure of the software services could lead to death or serious injury of any person, or to severe physical or environmental damage ("High Risk Use").
9. You agree that Microsoft is an intended third-party beneficiary of this Appendix C and that Microsoft holds the right to enforce this Appendix C, and to verify Your compliance with this Appendix C.



## Appendix D – UKCloud for Microsoft Azure

*[to be used only in conjunction with Our UKCloud for Microsoft Azure Services]*

1. You agree that the Microsoft Cloud Solution Provider Customer Agreement is incorporated into the terms of the Call Off Contract.
2. You agree that Microsoft is an intended third-party beneficiary of this Appendix D and that Microsoft holds the right to enforce this Appendix D, and to verify Your compliance with this Appendix D.
3. The Microsoft Cloud Solution Provider Customer Agreement is available here (Europe/United Kingdom).

<https://docs.microsoft.com/en-us/partner-%20center/agreements>

## Appendix E – UKCloud for Microsoft Azure

[to be used only when Services are being carried over the PSN network]

### 1. Defined Terms

**NCSC:** The UK government's National Technical Authority for Information Assurance. See <https://www.ncsc.gov.uk>.

**Code of Connection or CoCo:** The agreement, as set out in the code template, setting out the obligations and requirements for organisations wanting to connect to the PSN, together with all documents annexed to it and referenced within it.

**Code of Interconnection or CoICo:** The agreement, as set out in the code template, setting out the obligations and requirements for an organisation to provide PSN connectivity services, together with all documents annexed to it and referenced within it.

**Code of Practice or CoP:** The agreement, as set out in the code template, setting out the obligations and requirements for an organisation wanting to provide PSN services, together with all documents annexed to it and referenced within it.

**GCN Service Provider or GCNSP:** A component, product or service that enables PSN-connected organisations to enjoy intra and inter-organisation IP data transmission and for which a PSN compliance certificate has been awarded by the PSN team.

**Government Conveyance Network or GCN:** The total network of all GCN services provided by all GCN Service Providers.

**PSN connectivity service:** A component, product or service that enables PSN-connected organisations to enjoy intra and inter-organisation IP data transmission and for which a PSN compliance certificate has been awarded by the PSN team.

**PSN connectivity service provider:** An organisation that is supplying or is approved to supply a PSN connectivity service in accordance with a CoCo.

**PSN compliance certificate:** The certificate awarded to the individual infrastructures, GCN Services, PSN services and PSN connectivity services that make up the PSN.

**PSN customer:** The PSN service consumer that has achieved PSN compliance certification for their PSN customer environments and holds PSN supply agreement(s) with PSN service providers and PSN connectivity service providers for the services concerned.

**PSN supply agreement:** Either a contract or – if it is between public sector bodies – a Memorandum of Understanding (MoU) to deliver PSN services or PSN connectivity services.

**PSN service consumer:** An organisation which uses PSN services or PSN connectivity services.

**PSN Service Provider or PSNSP:** An organisation that is supplying or is approved to supply PSN services in accordance with a CoP.

**PSN service:** A functional service available to PSN-connected organisations from a PSN-connected infrastructure in order to enable the fulfilment of a specific business activity, which is offered by a PSN Service Provider in accordance with a CoP and for which a PSN Compliance Certification has been awarded by the Public Services Network Team.

**Public Services Network or PSN:** The government's high-performance network, which helps public sector organisations work together, reduce duplication and share resources.

### 2. Obligations

- 2.1 We shall ensure that any PSN and GCN services that it supplies, or are supplied by others, pursuant to this Agreement shall have been awarded and retain at all times a PSN compliance certificate.
- 2.2 We shall ensure that any PSN and GCN services that we supply, or are supplied by others, pursuant to this Agreement are delivered in accordance with the applicable code, codes or Documents of Understanding (DoU).
- 2.3 You shall ensure that any PSN customer environment used to consume PSN and GCN services supplied pursuant to this Agreement shall have been awarded and retain at all times a PSN compliance certificate.
- 2.4 You shall ensure that any PSN customer environment used to consume PSN and GCN services supplied pursuant to this Agreement shall be provided and maintained in accordance with the applicable code or codes.
- 2.5 Each of the Parties warrants and undertakes that they shall throughout the term, where specifically requested in writing by the PSN team acting on advice from the Infrastructure SIRO, immediately disconnect its GCN services, PSN services or customer environment (as the case may be) from such PSN services (including any Direct Network Services (DNS)), GCN services and customer environments as the PSN team instructs where there is an event affecting national security, or the security of the GCN or PSN.
- 2.6 The Parties acknowledge and agree that the PSN team shall not be liable to them or any other party for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of, or in consequence of any notification pursuant to clause 2.5.
- 2.7 Each of the Parties acknowledges and agrees that these clauses 2.4 and 2.5 are for the benefit of and may be enforced by the PSN team, notwithstanding the fact that the PSN team is not a party to this agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 2.8 We shall cooperate with suppliers of other PSN services and GCN service providers to enable the efficient operation of PSN.
- 2.9 The PSN services shall be delivered in a way that enables the sharing of services across customers of PSN services and maximises the savings to be achieved by such sharing of services.

## Appendix F – N3 Standards

*[to be used only when Services are being carried over the N3 network]*

1. To connect to Health & Social Care ICT Network (“N3”) via Us You will be required to fully adhere to the following requirements:
  - (a) To understand that We will only facilitate connections to the N3 network for those customers with which We have an existing direct contractual relationship, and subject to all other conditions contained within this Appendix C;
  - (b) To understand that We will only facilitate connections to the N3 network from customer sites which are physically located within England. Connections to locations within Scotland, Wales, Northern Ireland, the Isle of Man, and Channel Islands or outside the UK will automatically be rejected;
  - (c) To agree that any data made available over the N3 connection cannot be viewed, processed or stored in any location outside of England. In addition, information shall not be introduced into the N3 network from any location outside of England, nor shall the N3 network be used to transmit any information outside of England;
  - (d) To submit a completed and signed Information Assurance Governance Statement prior to the enablement of each service, and at the annual renewal of that service thereafter;
  - (e) To understand that failure to continually and fully comply with the Information Assurance Governance Statement with respect to each NHS consuming organisation will result in the prompt removal of N3 connectivity from that organisation;
  - (f) To submit a valid business justification (including physical site locations, network traffic flows, access requirements, encryption approach etc.) to Us prior to the initial enablement of each service, and at the annual renewal date of that service thereafter. Such justification shall only provide access to services/sites which are essential to the requirements of each specific NHS consuming organisation;
  - (g) To submit a supporting statement from a recognised NHS consuming organisation, that outlines the sponsorship for Your connection to the N3 network. This document should be dated within the last 90 days, and its validity will be checked by Us;
  - (h) To immediately notify Our Director of IA & Compliance should the business justification for any individual NHS organisation change in any way or no longer be valid;
  - (i) To immediately notify Our Director of Compliance & IA if the NHS organisation which sponsored each N3 connection ceases to be associated with You;
  - (j) To immediately notify Us by telephone and email of any actual or suspected incidents or security breaches which have or could impact upon the full, correct and secure operation of the N3 network;
  - (k) To fully comply with all Our activities (including investigations) which are associated with a reported incident or security breach;
  - (l) To understand that as an aggregator to the N3 service, We reserve the right to verify and/or audit the Your submission and supporting evidence, which may be undertaken remotely or on Your and/or NHS organisation's site. You agree to fully comply and co-operate with this activity, which will be subject to an appropriate NDA and undertaken on mutually acceptable dates;
  - (m) To promptly act upon renewal notifications received by Us for each connection, which include the re-submission of the IG Toolkit, and re-affirmation of both the individual business need and confirmation from the applicable NHS sponsoring organisation;
  - (n) To understand that failure to satisfactorily complete the re-submission in advance of the stated deadlines will result in the prompt removal of N3 connectivity from You;
  - (o) To agree that any penalties imposed upon Us as a result of misuse of the Health & Social Care ICT Network under its control which can be attributed to You will be passed onto You for payment.

### 2. We will:

- (a) Ensure that You deliver N3 connectivity to each NHS organisation strictly in accordance with the submitted business justification for that NHS organisation. Any request to vary that business justification shall be treated as a new application;

- (b) Ensure that any information which You transmit or receive across the N3 connection is appropriately encrypted, both at rest (before and after transiting the N3 network) and in flight (whilst transiting the N3 network).

## Appendix H – HSCN Mandatory Supplemental Terms

[to be used only when Services are being carried over the HSCN]

### 1. Defined Terms

**CN-SP Deed** means the deed required by the HSCN Authority to be signed by any CN-SP in order for it or its subcontractor to deliver HSCN Connectivity Services;

**Connection Agreement** means the agreement setting out the obligations and requirements for organisations wanting to connect to the HSCN, together with all documents annexed to it and referenced within it;

**Consumer Network Service Providers** or CN-SP means an organisation that is supplying or is approved to supply HSCN Connectivity Services having achieved the appropriate HSCN Compliance;

**Good Industry Practice** means the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

**Health and Social Care Network or HSCN** means the government's network for health and social care, which helps all organisations involved in health and social care delivery to work together and interoperate;

**HSCN Authority** means NHS Digital (the Health and Social Care Information Centre);

**HSCN Compliance or or HSCN Compliant** means a status as detailed in the document "HSCN Compliance Operating Model", as set out at [<https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>], and as updated by the HSCN Authority from time to time;

**HSCN Connectivity Services** means any service which is offered by a CN-SP to provide access to and routing over the HSCN;

**HSCN Consumer** means a recipient of HSCN Connectivity Services;

**HSCN Consumer Contract** means any agreement pursuant to which a CN-SP (or Sub-contractor of a CN- SP) agrees to supply HSCN Connectivity Services to a HSCN Consumer;

**HSCN Obligations Framework** means the obligations as available at [<https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>] which may be updated from time-to-time by the HSCN Authority;

**HSCN Solution Overview** means the document containing the architecture and technical solution for HSCN (the latest version can be accessed at <https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>);

**Material Sub-contractor** means a sub-contractor (including any affiliate or group company) of a CN-SP in relation to HSCN Connectivity Services which, in the reasonable opinion of the HSCN Authority, performs (or would perform if appointed) a substantive role in the provision of all or any part of the HSCN Connectivity Services; and

**NHS Digital CareCERT** means the NHS Digital Care Computing

Emergency Response Team, that provide cyber security intelligence and advice to the Health and Care System using links across the public sector and with partners in industry.

### 2. Key obligations

When used, the clauses below take precedence over any other terms within this Agreement.

- 2.1 We shall ensure that any HSCN Connectivity Services that it supplies pursuant to this Agreement shall have been awarded HSCN Compliance and shall retain at all times HSCN Compliance.
- 2.2 We shall ensure that any HSCN Connectivity Services that it supplies pursuant to this Agreement are delivered in accordance with the HSCN Obligations Framework.
- 2.3 You shall ensure that any HSCN service consumer environment used to consume HSCN Connectivity Services supplied pursuant to this Agreement, shall be provided and maintained in accordance with the Connection Agreement;
- 2.4 Each of the Parties warrants and undertakes that they shall throughout the term, immediately disconnect their HSCN Connectivity Services, or consumer environment (as the case may be) from all other HSCN Connectivity Services and consumer environments where specifically requested in writing by the NHS Digital CareCERT (or the HSCN Authority acting on behalf of NHS Digital CareCERT) where there is an event affecting national security, or the security of the HSCN.
- 2.5 The Parties acknowledge and agree that the HSCN Authority shall not be liable to them or any other party for any claims, proceedings, actions, damages, costs, expenses and any other liabilities of any kind which may arise out of, or in consequence of any notification pursuant to clause 2.4 above.
- 2.6 Each of the Parties acknowledges and agrees that clauses 2.4 and 2.5 are for the benefit of and may be enforced by the HSCN Authority, notwithstanding the fact that the HSCN Authority is not a party to this agreement, pursuant to the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt such appointment shall not increase any liability of the Supplier beyond the scope of their existing liabilities under this Agreement, the CN-SP Deed or the HSCN Obligations Framework.
- 2.7 We shall procure that any Material Sub- contractor shall comply with the terms of this Agreement in relation to their provision of HSCN Connectivity Services.
- 2.8 Where any level of standard, practice or requirement associated with any of Our obligations referenced in these terms and conditions, the HSCN Obligations Framework, the HSCN CN-SP Service Management Requirement Addendum or the HSCN Consumer Contract conflicts with another level of standard, practice or requirement associated with any other obligation or with Good Industry Practice, then the higher standard or requirement or best practice shall be adopted by Us. In the event that We cannot determine which represents the higher standard or requirement or best practice, We shall seek guidance from the HSCN Authority which shall reasonably determine which is the level of standard, practice or requirement that is the most favourable from a HSCN Consumer perspective, and thus with which standard or best practice to comply.
- 2.9 If We fail to provide any part of the HSCN Connectivity Services as required under this HSCN Consumer Contract, We shall, in accordance with the guidance documentation published at [<https://www.digital.nhs.uk/health-social-care-network/connectivity-suppliers>], be directly liable to the HSCN Consumer in respect of such HSCN Connectivity Services.
- 2.10 You shall share all records and information with the HSCN Authority as are reasonably requested by the HSCN Authority in connection with the monitoring and operation of the HSCN network described in the HSCN Solution Overview Document.

# Microsoft Cloud Agreement

This Microsoft Cloud Agreement is entered into between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually ("Customer"), and Microsoft Ireland Operations Limited ("Microsoft"). It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the "agreement"). It is effective on the date that your Reseller provisions your Subscription. Key terms are defined in Section 10.

## 1. *Grants, rights and terms.*

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

- a. **Software.** Upon acceptance of each order, Microsoft grants Customer a limited right to use the Software in the quantities ordered.
  - (i) **Use Rights.** The Use Rights in effect when Customer orders Software will apply to Customer's use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.
  - (ii) **Temporary and perpetual licenses.** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.
- b. **Online Services.** Customer may use the Online Services as provided in this agreement.
  - (i) **Online Services Terms.** The Online Services Terms in effect when Customer orders or renews a subscription to an Online Service will apply for the applicable subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.
  - (ii) **Suspension.** Microsoft may suspend use of an Online Service during Customer's violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.
  - (iii) **End Users.** Customer controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.
  - (iv) **Customer Data.** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.
  - (v) **Responsibility for your accounts.** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use of the Online Services. Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials or any security incident related to the Online Services.
- c. **License transfers.** License transfers are not permitted, except that Customer may transfer only fully-paid perpetual licenses to (1) an Affiliate or (2) a third party, solely in connection with the transfer of hardware or employees to whom the licenses have been assigned to the third party as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer and its Affiliates must uninstall and discontinue using the licensed Product and render any copies unusable. Nothing in this agreement prohibits the transfer of Software to the extent allowed under applicable law if the distribution right has been exhausted.
- d. **Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.
- e. **Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.
- f. **Preview releases.** Microsoft may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."
- g. **Verifying compliance for Products.**
  - (i) **Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Customer

hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third party audit.

- (ii) **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then within 30 days (1) Customer must order sufficient licenses to cover its use, and (2) if unlicensed use is 5% or more, Customer must reimburse Microsoft for the costs Microsoft incurred in verification and acquire the necessary additional licenses at 125% of the price, based on the then-current price last and customer price level. The unlicensed use percentage is based on the total number of licenses purchased for current use compared to the actual installed base. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.
- (iii) **Verification process.** Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Customer's operations.

## 2. Subscriptions, ordering.

- a. **Choosing a Reseller.** Customer must choose and maintain a Reseller authorized within its region. If Microsoft or Reseller chooses to discontinue doing business with each other, Customer must choose a replacement Reseller or purchase a Subscription directly from Microsoft, which may require Customer to accept different terms.
- b. **Available Subscription offers.** The Subscription offers available to Customer will be established by its Reseller and generally can be categorized as one or a combination of the following:
  - (i) **Online Services Commitment Offering.** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.
  - (ii) **Consumption Offering (also called Pay-As-You-Go).** Customer pays based on actual usage with no upfront commitment.
  - (iii) **Limited Offering.** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.
  - (iv) **Software Commitment Offering.** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.
- c. **Ordering.**
  - (i) Orders must be placed through Customer's designated Reseller. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Customer's internal business. If Customer grants any rights to Affiliates or third parties with respect to Software or Customer's Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.
  - (ii) Customer's Reseller may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.
- d. **Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by Customer's Reseller.
- e. **Renewal.**
  - (i) Upon renewal of a Subscription, Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.
  - (ii) Customer's Subscription will automatically renew unless Customer provides its Reseller with notice of its intent not to renew prior to the expiration of the Term.
- f. **Eligibility for Academic, Government and Nonprofit versions.** Customer agrees that if it is purchasing an academic, government or nonprofit offer, Customer meets the respective eligibility requirements listed at the following sites:
  - (i) For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at <http://go.microsoft.com/academic>;
  - (ii) For government offers, the requirements listed at <http://go.microsoft.com/government>; and
  - (iii) For nonprofit offers, the requirements listed at <http://go.microsoft.com/nonprofit>.

Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.
- g. **Taxes.** The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax.

## 3. Term, termination.

- a. **Agreement term and termination.** This agreement will remain in effect until the expiration or termination of Customer's Subscription, whichever is earliest. Customer may terminate this agreement at any time by contacting its Reseller. The expiration or termination of this agreement will only terminate Customer's right to place new orders for additional Products under this agreement.
- b. **Termination for cause.** If either party breaches this Agreement, the other party may terminate the breached agreement (in whole or in part, including orders) upon notice. If the breach is curable within 30 days, then the terminating party must provide 30 days' notice to the



breaching party and an opportunity to cure the breach.

- c. **Cancel a Subscription.** Customer's Reseller will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.

#### **4. Security, privacy, and data protection.**

- a. **Reseller Administrator Access and Customer Data.** Customer acknowledges and agrees that (i) once Customer has chosen a Reseller, that Reseller will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Reseller; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Reseller's administrative privileges; (iii) Reseller's privacy practices with respect to Customer Data or any services provided by Reseller are subject to the terms of Customer's agreement with its Reseller and may differ from Microsoft's privacy practices; and (iv) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing Reseller with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.
- b. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.
- c. Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by a Reseller. If Customer uses software or services that are hosted by a Reseller, that use will be subject to Reseller's privacy practices, which may differ from Microsoft's.
- d. As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Reseller or as required by law, and Customer shall obtain the users' consent to the same.
- e. Customer appoints Reseller as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

#### **5. Warranties.**

- a. **Limited warranty.**

- (i) **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.
- (ii) **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are in the SLA.

The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.
- c. **Disclaimer.** Except for the limited warranties above, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.

#### **6. Defense of third party claims.**

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Fix after being notified to stop due to a third-party claim.
- b. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or non-Microsoft software hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product or Fix, alone or in combination with anything else, violates the law or harms a third party.

#### **7. Limitation of liability.**

For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

- a. **Online Services.** For Online Services, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.
- b. **Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- c. **Exclusions.** In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.
- d. **Exceptions.** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 6; or (2) violation of the other's intellectual property rights.

## 8. **Support and Professional Services.**

Customer's Reseller will provide details on support services available for Products purchased under this agreement. Support services may be performed by Reseller or its designee, which in some cases may be Microsoft. If Customer purchases Professional Services under this agreement, the performance of those Professional Services will be subject to the terms and conditions in the Use Rights.

## 9. **Miscellaneous.**

- a. **Notices.** You must send notices by mail, return receipt requested, to the address below.

<p><b>Notices should be sent to:</b></p> <p>Microsoft Ireland Operations Limited  South County Business Park  Leopardstown  Dublin 18</p>
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You agree to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.

- b. **Assignment.** You may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without your consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.
- c. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
- d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
- e. **No agency.** This agreement does not create an agency, partnership, or joint venture.
- f. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- g. **Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.
- h. **Microsoft as an independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.
- i. **Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.
- j. **Applicable law and venue.** This agreement is governed by the laws of Ireland. If Microsoft brings an action to enforce this agreement, Microsoft will bring it in the jurisdiction where Customer has its headquarters. If Customer brings an action to enforce this agreement, Customer will bring it in Ireland. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
- k. **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.
- l. **Survival.** All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.
- m. **U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.
- n. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.

- o. Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.
- p. Waiver of right to void online purchases.** To the maximum extent permitted by applicable law, Customer waives its rights to void purchases under this agreement pursuant to any law governing distance selling or electronic or online agreements, as well as any right or obligation regarding prior information, subsequent confirmation, rights of withdrawal, or cooling-off periods.

## **10. Definitions.**

Any reference in this agreement to "day" will be a calendar day. "Acceptable Use Policy" is set forth in the Online Services Terms.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"Customer Data" is defined in the Online Services Terms.

"End User" means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services.

"Fix" means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

"Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site. "Non-Microsoft Product" is defined in the Online Services Terms.

"Online Services" means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

"Online Services Terms" means the additional terms that apply to Customer's use of Online Services published on the Licensing Site and updated from time to time.

"Previews" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

"Product" means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

"Product Terms" means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Licensing Site and is updated from time to time.

"Professional Services" means Product support services and Microsoft consulting services provided to Customer under this agreement.

"Professional Services" does not include Online Services.

"Reseller" means an entity authorized by Microsoft to resell Software licenses and Online Service Subscriptions under this program and engaged by you to provide assistance with your Subscription.

"SLA" means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

"Software" means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

"Subscription" means an enrollment for Online Services for a defined Term as established by your Reseller. "Term" means the duration of a Subscription (e.g., 30 days or 12 months).

"Use Rights" means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.