

Pulse Terms and Conditions

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services and related services shall be governed by these Terms and Conditions.

1. Definitions

1.1 Except to the extent expressly provided otherwise, in these Terms and Conditions:

"Account" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts;

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 09:00 to 17:00 GMT/BST on a Business Day;

"Change" means any change to the Agreement;

"Charges" means the following amounts:

- a) the amounts agreed between the parties with a provided purchase order;
- b) such amounts as may be agreed in writing by the parties from time to time; and
- c) amounts calculated by multiplying the Provider's standard charging rates (as notified by the Provider to the Customer before the date of the Agreement) by the quantity or volume of the associated service item;

"Confidential Information" means the Provider Confidential Information and the Customer Confidential Information;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** should be construed accordingly);

"Customer" means the person or entity that is contracting the services from the provider;

"Customer Confidential Information" means:

- a) any information disclosed by or on behalf of the Customer to the Provider during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure:
 - (i) was marked or described as "confidential"; or
 - (ii) should have been reasonably understood by the Provider to be confidential; and
- b) the Customer Data;

"Customer Data" means [all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer];

"Customer Indemnity Event" has the meaning given to it in Clause 20.3;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement;

"Customer Representatives" means the person or persons identified as such in Section 6 of the Services Order Form, and any additional or replacement persons that may be appointed by the Customer giving to the Provider written notice of the appointment;

"Customer Systems" means the hardware and software systems of the Customer that interact with, or may reasonably be expected to interact with, the Hosted Services;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, for the period during which it is in force, Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"Effective Date" means the date upon which the Provider sends to the Customer an onboarding confirmation or an anniversary confirmation;

"Expenses" means the travel, accommodation and subsistence expenses that are reasonably necessary for, and incurred by the Provider exclusively in connection with, the performance of the Provider's obligations under the Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power

failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means the services provided by the Provider to the Customer which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

"Hosted Services Defect" means a defect, error or bug in the Platform having a material adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- a) any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;
- b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- c) a failure of the Customer to perform or observe any of its obligations in the Agreement; and/or
- d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in the Documentation;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Minimum Term" means, in respect of the Agreement, the period of 12 months beginning on the Effective Date;

"Permitted Purpose" means purpose as agreed between the Provider and Customer, with the typical purposes being for the management and delivery of IT Services to one or more organisations;

"Personal Data" has the meaning given to it in the General Data Protection Regulation (Regulation (EU) 2016/679);

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer resources on which that application, database, system and server software is installed;

"Provider" means PowerONPlatforms Limited, a company incorporated in England and Wales (registration number 08674373) having its registered office at Stanley Harrison House, York, YO23 1DE;

"Provider Confidential Information" means:

- a) any information disclosed by or on behalf of the Provider to the Customer during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Customer (acting reasonably) to be confidential; and
- b) the terms of the Agreement;

"Provider Indemnity Event" has the meaning given to it in Clause 20.1;

"Provider Representatives" means the person or persons identified by the Provider at commencement of the Agreement, and any additional or replacement persons that may be appointed by the Provider giving to the Customer written notice of the appointment;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

"Service Description" means the description of the Hosted Services current during the term of the agreement;

"Set Up Services" means the configuration and provision of the online service;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"Term" means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Terms and Conditions" means all the documentation containing the provisions of the Agreement, namely the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

"Third Party Services" means any hosted or cloud services provided by any third party that may transmit data to and/or from the Hosted Services;

"Update" means a hotfix, patch or minor version update to any Platform software; and

"Upgrade" means a major version upgrade of any Platform software.

2. Term

- 2.1 The Agreement shall come into force upon the Effective Date.
- 2.2 The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 23.
- 2.3 Unless the parties expressly agree otherwise in writing, each purchase shall be governed by these Terms and Conditions.

3. Set Up Services

- 3.1 The Provider shall provide the Set Up Services to the Customer.
- 3.2 The Provider shall use reasonable endeavors to ensure that the Set Up Services are provided upon or promptly following the Effective Date.
- 3.3 The Customer acknowledges that a delay in the Customer performing its obligations in the Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 21.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.
- 3.4 Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

4. Hosted Services

- 4.1 The Provider shall create an Account for the Customer and shall provide to the Customer login details for that Account on or promptly following the Effective Date.
- 4.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services during the Term.
- 4.3 The licence granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:
 - a) may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
- 4.4 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:
 - a) the Customer must not sub-license its right to access and use the Hosted Services;
 - b) the Customer must not permit any unauthorised person to access or use the Hosted Services;

- c) the Customer must not use the Hosted Services to provide services to third parties;
 - d) the Customer must not republish or redistribute any content or material from the Hosted Services; and
 - e) the Customer must not make any alteration to the Platform.
- 4.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.
- 4.6 The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.
- 4.7 The Customer must comply with Schedule 1 (Acceptable Use Policy) and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of an administrator Account comply with Schedule 1 (Acceptable Use Policy).
- 4.8 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 4.9 The Customer must not use the Hosted Services:
- a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.10 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

5. Maintenance Services

- 5.1 The Provider shall provide the Maintenance Services to the Customer during the Term.
- 5.2 The Provider shall provide the Maintenance Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Provider's industry.
- 5.3 The Provider shall provide the Maintenance Services in accordance with Schedule 3 (Maintenance SLA).

6. Support Services

- 6.1 The Provider shall provide the Support Services to the Customer during the Term.

- 6.2 The Provider shall provide the Support Services with reasonable skill and care.
- 6.3 The Provider shall provide the Support Services in accordance with Schedule 4 (Support SLA).
- 6.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

7. Customer obligations

- 7.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider, or procure for the Provider, such:
 - a) co-operation, support and advice;
 - b) information and documentation;
 - c) Necessary software licensing; and
 - d) governmental, legal and regulatory licences, consents and permits,as are reasonably necessary to enable the Provider to perform its obligations under the Agreement.

8. Customer Systems

- 8.1 The Customer shall ensure that the Customer Systems comply, and continue to comply during the Term, with the requirements as defined in the Service Description, subject to any changes agreed in writing by the Provider.

9. Customer Data

- 9.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement, subject always to any express restrictions elsewhere in the Agreement.
- 9.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 9.3 The Provider shall create a back-up copy of the Customer Data at least daily and shall retain and securely store each such copy for a minimum period of 30 days.

10. Integrations with Third-Party Services

- 10.1 The Provider may integrate any Third-Party Services with the Hosted Services based on request from the Customer, or a need to support the Hosted Services.
- 10.2 The Provider may remove, suspend or limit any Third-Party Services integration at any time in its sole discretion.
- 10.3 The supply of requested Third Party Services shall be under a separate contract or arrangement between the Customer and the relevant third party. When the Provider does not contract to supply the Third-Party Services, it is then not a party to any contract for, or otherwise responsible in respect of, the provision of any Third-Party Services. Fees may be payable by the Customer to the relevant third party in respect of the use of Third-Party Services.
- 10.4 The Customer acknowledges that:
- a) the integration of Third-Party Services may entail the transfer of Customer Data from the Hosted Services to the relevant Third-Party Services; and
 - b) the Provider has no control over, or responsibility in respect of, any disclosure, modification, deletion or other use of Customer Data resulting from any integration with any Third-Party Services requested by the Customer.
- 10.5 Without prejudice to its other obligations under this Clause 10, the Customer must ensure that it has in place the necessary contractual safeguards to ensure that both:
- a) the transfer of relevant Customer Personal Data to a provider of Third Party Services is lawful; and
 - b) the use of relevant Customer Personal Data by a provider of Third Party Services is lawful.
- 10.6 The Customer shall have the opportunity to consent to transfers of Customer Data to any Third-Party Services operator. The Provider must ensure that such transfers shall not take place without the consent of the Customer.
- 10.7 The Customer hereby consents to the transfer of the Customer Data to the Third-Party Services required for the delivery of the Hosted Services.
- 10.8 The use of some features of the Hosted Services may depend upon the Customer enabling and agreeing to integrations between the Hosted Services and Third-Party Services.
- 10.9 The Customer warrants to the Provider that the transfer of Customer Data by the Provider to a provider of Third Party Services in accordance with this Clause 10 will not infringe any person's legal or contractual rights and will not put the Provider in breach of any applicable laws.

10.10 Additional Charges may be payable by the Customer to the Provider in respect of a Third-Party Services integration.

10.11 Save to the extent that the parties expressly agree otherwise in writing and subject to Clause 21.1:

- a) the Provider gives no warranties or representations in respect of any Third-Party Services; and
- b) the Provider shall not be liable to the Customer in respect of any loss or damage that may be caused by any Third-Party Services or any provider of Third Party Services.

11. No assignment of Intellectual Property Rights

11.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

12. Representatives

12.1 The Provider shall ensure that all instructions given by the Provider in relation to the matters contemplated in the Agreement will be given by a Provider Representative to a Customer Representative, and the Customer:

- a) may treat all such instructions as the fully authorised instructions of the Provider; and
- b) may decline to comply with any other instructions in relation to that subject matter.

12.2 The Customer shall ensure that all instructions given by the Customer in relation to the matters contemplated in the Agreement will be given by a Customer Representative to a Provider Representative, and the Provider:

- a) may treat all such instructions as the fully authorised instructions of the Customer; and
- b) may decline to comply with any other instructions in relation to that subject matter.

13. Management

13.1 The parties shall hold review meetings by telephone conference or using internet-based conferencing facilities:

- a) once every 3 months during the Term; and
- b) at the reasonable request of either party.

13.2 A party requesting a management meeting shall give to the other party at least 10 Business Days' notice of the meeting.

- 13.3 Wherever necessary to enable the efficient conduct of business, the Provider shall be represented at review meetings by at least 1 Provider Representative and the Customer shall be represented at review meetings by at least 1 Customer Representative.

14. Charges

- 14.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.
- 14.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 14.2.
- 14.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

15. Payments

- 15.1 The Provider shall issue invoices for the Charges to the Customer on or after the invoicing dates based on-order and quarterly thereafter.
- 15.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 15.
- 15.3 The Customer must pay the Charges by bank transfer (using such payment details as are notified by the Provider to the Customer from time to time).
- 15.4 If the Customer does not pay any amount properly due to the Provider under these Terms and Conditions, the Provider may:
- a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

16. Confidentiality obligations

- 16.1 The Provider must:
- a) keep the Customer Confidential Information strictly confidential;

- b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent;
- c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
- d) act in good faith at all times in relation to the Customer Confidential Information; and
- e) not use any of the Customer Confidential Information for any purpose other than the Permitted Purpose.

16.2 The Customer must:

- a) keep the Provider Confidential Information strictly confidential;
- b) not disclose the Provider Confidential Information to any person without the Provider's prior written consent;
- c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Customer uses to protect the Customer's own confidential information of a similar nature, being at least a reasonable degree of care;
- d) act in good faith at all times in relation to the Provider Confidential Information; and
- e) not use any of the Provider Confidential Information for any purpose other than the Permitted Purpose.

16.3 Notwithstanding Clauses 16.1 and 16.2, a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

16.4 No obligations are imposed by this Clause 16 with respect to a party's Confidential Information if that Confidential Information:

- a) is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
- b) is or becomes publicly known through no act or default of the other party; or
- c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

- 16.5 The restrictions in this Clause 16 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.
- 16.6 Upon the termination of the Agreement, each party must immediately cease to use the other party's Confidential Information.
- 16.7 The provisions of this Clause 16 shall continue in force for a period of 5 years following the termination of the Agreement, at the end of which period they will cease to have effect.

17. Data protection

- 17.1 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.
- 17.2 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement, the Personal Data of data subjects falling within the categories specified in Part 1 of Schedule 5 (Data processing information).
- 17.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement, Personal Data of the types specified in Part 2 of Schedule 5 (Data processing information).
- 17.4 The Provider shall only process the Customer Personal Data for the purposes specified in Part 3 of Schedule 5 (Data processing information).
- 17.5 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term.
- 17.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to any place outside the European Economic Area), as set out in these Terms and Conditions or any other document agreed by the parties in writing.
- 17.7 Notwithstanding any other provision of these Terms and Conditions, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 17.8 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 17.9 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the

Customer Personal Data, including those measures specified in Part 4 of Schedule 5 (Data processing information).

- 17.10 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. The Provider is hereby authorised by the Customer, as at the Effective Date, to engage those third parties identified in, or falling within the processor categories specified in, Part 5 of Schedule 5 (Data processing information) to process the Customer Personal Data. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third-party processor, and if the Customer objects to any such changes before their implementation, then the Customer may terminate the Agreement immediately by giving written notice of termination to the Provider. The Provider shall ensure that each third-party processor is subject to equivalent legal obligations as those imposed on the Provider by this Clause 17.
- 17.11 The Provider shall, insofar as possible and taking into account the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.
- 17.12 The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under the Data Protection Laws.
- 17.13 The Provider shall, at the choice of the Customer, delete or return all of the Customer Personal Data to the Customer after the provision of services relating to the processing, and shall delete existing copies save to the extent that applicable law requires storage of the relevant Personal Data.
- 17.14 The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 17.
- 17.15 If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under these Terms and Conditions, then the parties shall use their best endeavours promptly to agree such variations to these Terms and Conditions as may be necessary to remedy such non-compliance.

18. Warranties

18.1 The Provider warrants to the Customer that:

- a) the Provider has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;

- b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under these Terms and Conditions; and
- c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

18.2 The Provider warrants to the Customer that:

- a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
- b) the Hosted Services will be free from Hosted Services Defects;
- c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;
- d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- e) the Platform will incorporate security features reflecting the requirements of good industry practice.

18.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under English law.

18.4 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

18.5 If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

- a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or
- b) procure for the Customer the right to use the Hosted Services in accordance with these Terms and Conditions.

18.6 The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

18.7 All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or

representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

19. Acknowledgements and warranty limitations

- 19.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 19.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.
- 19.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.
- 19.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

20. Indemnities

- 20.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of these Terms and Conditions (a "**Provider Indemnity Event**").
- 20.2 The Customer must:
- a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;
 - b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;
 - c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and
 - d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider,

and the Provider's obligation to indemnify the Customer under Clause 20.1 shall not apply unless the Customer complies with the requirements of this Clause 20.2.

20.3 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions (a "**Customer Indemnity Event**").

20.4 The Provider must:

- a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
- c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
- d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer,

and the Customer's obligation to indemnify the Provider under Clause 20.3 shall not apply unless the Provider complies with the requirements of this Clause 20.4.

20.5 The indemnity protection set out in this Clause 20 shall be subject to the limitations and exclusions of liability set out in the Agreement.

21. Limitations and exclusions of liability

21.1 Nothing in these Terms and Conditions will:

- a) limit or exclude any liability for death or personal injury resulting from negligence;
- b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- c) limit any liabilities in any way that is not permitted under applicable law; or
- d) exclude any liabilities that may not be excluded under applicable law.

21.2 The limitations and exclusions of liability set out in this Clause 21 and elsewhere in these Terms and Conditions:

- a) are subject to Clause 21.1; and
- b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising

in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

- 21.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 21.4 The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings.
- 21.5 The Provider shall not be liable to the Customer in respect of any loss of revenue or income.
- 21.6 The Provider shall not be liable to the Customer in respect of any loss of use or production.
- 21.7 The Provider shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.
- 21.8 The Provider shall not be liable to the Customer in respect of any loss or corruption of any data, database or software; providing that this Clause 21.8 shall not protect the Provider unless the Provider has fully complied with its obligations under Clause 9.3.
- 21.9 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 21.10 The liability of each party to the other party under the Agreement in respect of any event or series of related events shall not exceed the total amount paid and payable by the Customer to the Provider under the Agreement in the 12-month period preceding the commencement of the event or events.
- 21.11 The aggregate liability of each party to the other party under the Agreement shall not exceed the greater of the total amount paid and payable by the Customer to the Provider under the Agreement.

22. Force Majeure Event

- 22.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 22.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:
 - a) promptly notify the other; and
 - b) inform the other of the period for which it is estimated that such failure or delay will continue.

22.3 A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

23. Termination

23.1 Either party may terminate the Agreement by giving to the other party not less than 30 days' written notice of termination, expiring after the end of the Minimum Term.

23.2 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- a) the other party commits a material breach of the Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied;

23.3 Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

- b) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- c) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- d) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement);

23.4 The Provider may terminate the Agreement immediately by giving written notice to the Customer if:

- a) any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- b) the Provider has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 23.4.

24. Effects of termination

24.1 Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 4.10, 10.11, 15.2, 15.4, 16, 17.2, 17.3, 17.4, 17.5, 17.6, 17.7, 17.8, 17.9, 17.10, 17.11, 17.12, 17.13, 17.14, 17.15, 20, 21, 24, 25, 28, 29, 30, 31, 32, 33, 34 and 35].

24.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Agreement shall not affect the accrued rights of either party.

24.3 Within 30 days following the termination of the Agreement for any reason:

- a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and
- b) the Provider must refund to the Customer any Charges paid by the Customer to the Provider in respect of Services that were to be provided to the Customer after the termination of the Agreement,

without prejudice to the parties' other legal rights.

25. Non-solicitation of personnel

25.1 The Customer must not, without the prior written consent of the Provider, either during the Term or within the period of 6 months following the end of the Term, engage or solicit for engagement or employment any employee or subcontractor of the Provider who has been involved in any way in the negotiation or performance of the Agreement.

25.2 The Provider must not, without the prior written consent of the Customer, either during the Term or within the period of 6 months following the end of the Term, engage or solicit for engagement or employment any employee or subcontractor of the Customer who has been involved in any way in the negotiation or performance of the Agreement.

26. Notices

26.1 Any notice given under these Terms and Conditions must be in writing, whether or not described as "written notice" in these Terms and Conditions.

26.2 Any notice given by the Customer to the Provider under these Terms and Conditions must be sent by email.

26.3 Any notice given by the Provider to the Customer under these Terms and Conditions must be sent by email.

- 26.4 The addressee and contact details set out in Section 7 of the Services Order Form may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 26.
- 26.5 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within 2 Business Days following receipt of the notice.
- 26.6 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:
- a) in the case of notices sent by email, at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent); and

27. Subcontracting

- 27.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Provider may subcontract any of its obligations under the Agreement.
- 27.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.
- 27.3 Notwithstanding the provisions of this Clause 27 but subject to any other provision of these Terms and Conditions, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third-party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

28. Assignment

- 28.1 The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights under these Terms and Conditions.
- 28.2 The Customer must not assign, transfer or otherwise deal with the Customer's contractual rights and/or obligations under these Terms and Conditions without the prior written consent of the Provider, such consent not to be unreasonably withheld or delayed.

29. No waivers

- 29.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 29.2 No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

30. Severability

30.1 If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

30.2 If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

31. Third party rights

31.1 The Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.

31.2 The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

32. Variation

32.1 The Agreement may not be varied except by means of a written document signed by or on behalf of each party.

33. Entire agreement

33.1 The main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

33.2 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

33.3 The provisions of this Clause 33 are subject to Clause 21.1.

34. Law and jurisdiction

34.1 These Terms and Conditions shall be governed by and construed in accordance with English law.

34.2 Any disputes relating to the Agreement shall be subject to the exclusive jurisdiction of the courts of England.

35. Interpretation

35.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- b) any subordinate legislation made under that statute or statutory provision.

- 35.2 The Clause headings do not affect the interpretation of these Terms and Conditions.
- 35.3 References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 35.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

SCHEDULE 1 (ACCEPTABLE USE POLICY)

1. Introduction

- 1.1 This acceptable use policy (the "**Policy**") sets out the rules governing:
- a) the use of the Hosted Services and Platform Services (the "**Services**"); and
 - b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("**Content**").
- 1.2 References in this Policy to "you" are to any customer for the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to PowerONPlatforms Limited (and "we" and "our" should be construed accordingly).
- 1.3 By using the Services, you agree to the rules set out in this Policy.

2. General usage rules

- 2.1 You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.
- 2.2 You must not use the Services:
- a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 2.3 You must ensure that all Content complies with the provisions of this Policy.
- 2.4 You must not use abusive or defamatory wording within the service.

3. Unlawful Content

- 3.1 Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person (in each case in any jurisdiction and under any applicable law).
- 3.2 Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:
- a) be libellous or maliciously false;
 - b) be obscene or indecent;
 - c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;
 - d) infringe any right of confidence, right of privacy or right under data protection legislation;
 - e) constitute negligent advice or contain any negligent statement;

- f) constitute an incitement to commit a crime, instructions for the commission of a crime or the promotion of criminal activity;
- g) be in contempt of any court, or in breach of any court order;
- h) constitute a breach of racial or religious hatred or discrimination legislation;
- i) be blasphemous;
- j) constitute a breach of official secrets legislation; or
- k) constitute a breach of any contractual obligation owed to any person.

4. Monitoring

- 4.1 You acknowledge that we may actively monitor the Content and the use of the Services.

5. Data mining

- 5.1 You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

6. Harmful software

- 6.1 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.
- 6.2 The Content must not contain or consist of, and you must not promote or distribute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.

SCHEDULE 2 (AVAILABILITY SLA)

1. Introduction to availability SLA

- 1.1 This Schedule 2 sets out the Provider's availability commitments relating to the Hosted Services.
- 1.2 In this Schedule 2, "uptime" means the percentage of time during a given period when the Hosted Services are available at the gateway between public internet and the network of the hosting services provider for the Hosted Services.

2. Availability

- 2.1 The Provider shall use reasonable endeavours to ensure that the uptime for the Hosted Services is at least 99.9% during each calendar month.
- 2.2 The Provider shall be responsible for measuring uptime, and shall do so using the following methodology: *measurement of core primary site uptime via Azure Log Analytics*.

3. Exceptions

- 3.1 Downtime caused directly or indirectly by any of the following shall not be considered when calculating whether the Provider has met the uptime guarantee given in Paragraph 2.1:
 - a) a Force Majeure Event;
 - b) a fault or failure of the internet or any public telecommunications network;
 - c) a fault or failure of the Provider's hosting infrastructure services provider;
 - d) a fault or failure of the Customer's computer systems or networks;
 - e) any breach by the Customer of the Agreement; or
 - f) scheduled maintenance carried out in accordance with the Agreement.

SCHEDULE 3 (MAINTENANCE SLA)

1. Introduction

1.1 This Schedule 3 sets out the service levels applicable to the Maintenance Services.

2. Scheduled Maintenance Services

2.1 The Provider shall where practicable give to the Customer at least 10 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this Schedule 3.

2.2 The Provider shall provide all scheduled Maintenance Services outside Business Hours.

3. Updates

3.1 The Provider shall perform the application of any feature update to the Platform, providing at least 10 Business Days' prior written notice of the application of any feature update to the Platform.

3.2 The Provider shall apply Updates to the Platform as follows:

- a) third party security Updates shall be applied to the Platform promptly following release by the relevant third party, providing that the Provider may acting reasonably decide not to apply any particular third party security Update;
- b) the Provider's security Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update; and
- c) other Updates shall be applied to the Platform promptly following the identification of the relevant security risk and the completion of the testing of the relevant Update.

SCHEDULE 4 (SUPPORT SLA)

1. Introduction

- 1.1 This Schedule 4 sets out the service levels applicable to the Support Services.

2. Helpdesk

- 2.1 The Provider shall make available to the Customer a helpdesk in accordance with the provisions of this Schedule 4.
- 2.2 The Customer may use the helpdesk for the purposes of requesting and, where applicable, receiving the Support Services; and the Customer must not use the helpdesk for any other purpose.
- 2.3 The Provider shall ensure that the helpdesk is accessible by telephone, email and using the Provider's web-based ticketing system.
- 2.4 The Provider shall ensure that the helpdesk is operational and adequately staffed during Business Hours during the Term.
- 2.5 The Customer shall ensure that all requests for Support Services that it may make from time to time shall be made through the helpdesk.

3. Response and resolution

- 3.1 Issues raised through the Support Services shall be categorised as follows:
- a) urgent: the Hosted Services are inoperable or a core function of the Hosted Services is unavailable;
 - b) high: a core function of the Hosted Services is significantly impaired;
 - c) medium: a core function of the Hosted Services is impaired, where the impairment does not constitute a serious issue; or a non-core function of the Hosted Services is significantly impaired; and
 - d) low: any impairment of the Hosted Services not falling into the above categories; and any cosmetic issue affecting the Hosted Services.
- 3.2 The Provider shall determine, acting reasonably, into which severity category an issue falls.
- 3.3 The Provider shall use all reasonable endeavours to respond to requests for Support Services promptly, and in any case in accordance with the following time periods:
- a) urgent: 4 Business Hours;
 - b) high: 4 Business Hours;
 - c) medium: 8 Business Hours; and

d) low: 16 Business Hours.

3.4 The Provider shall ensure that its response to a request for Support Services shall include the following information (to the extent such information is relevant to the request): an acknowledgement of receipt of the request, where practicable an initial diagnosis in relation to any reported error, and an anticipated timetable for action in relation to the request.

3.5 The Provider shall use all reasonable endeavours to resolve issues raised through the Support Services promptly, and in any case in accordance with the following time periods:

- a) urgent: 4 Business Hours;
- b) high: 1 Business Day;
- c) medium: 10 Business Days; and
- d) low: 30 Business Days.

4. Provision of Support Services

4.1 The Support Services shall be provided remotely, save to the extent that the parties agree otherwise in writing.

5. Limitations on Support Services

5.1 If the total hours spent by the personnel of the Provider performing the Support Services during any calendar month exceed twelve (12) hours then:

- a) the Provider will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and
- b) the Provider may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.

5.2 The Provider shall have no obligation to provide Support Services in respect of any issue caused by:

- a) the improper use of the Hosted Services by the Customer; or
- b) any alteration to the Hosted Services made without the prior consent of the Provider.

SCHEDULE 5 (DATA PROCESSING INFORMATION)

1. Categories of data subject

- Customers of Hosted Service

2. Types of Personal Data

- *non-sensitive Personal Data*
- *Customer Data*
 - *Name*
 - *E-mail*
 - *Telephone*

3. Purposes of processing

- *IT Administration*
- *Customer Account Administration*

4. Security measures for Personal Data

- *Protected to named administrator access only.*

5. Sub-processors of Personal Data

- *Microsoft Limited*