



2019 - 2020

Agreement Relating to the Supply of IT Goods and Services

Phoenix Software Limited ⁽¹⁾ and
[Insert] ⁽²⁾

SUBJECT TO CONTRACT

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DATE **2018**

PARTIES

- (1) Phoenix Software Limited incorporated and registered in England and Wales with company number 2548628 whose registered office is at Bytes Way, Randalls Way, Leatherhead, Surrey KT22 7TW (**Supplier**).
- (2) [Full Company Name] incorporated and registered in England and Wales with company number [number] whose registered office is at [registered office address] (**Customer**).

BACKGROUND

- (A) The Supplier is a provider of hardware and software and specialises in delivering value-added services to its customers in areas such as cloud computing, virtualisation, storage and data loss prevention.
- (B) The Customer wishes to acquire certain hardware, software and services from the Supplier and the Supplier agrees to supply that hardware, software and services to the Customer upon the terms and conditions set out below.
- (C) The Supplier also provides volume support services to its customers which are available for purchase on a pre-paid basis.
- (D) Where the Customer requires volume support services, the Supplier agrees to provide those services to the Customer upon the terms and conditions set out below.

AGREED TERMS

1. INTERPRETATION

1.1 Definitions and principles

- 1.1.1 Certain words and expressions used in and principles of interpretation to this Agreement are defined or set out in Schedule 1 (*Interpretation*).
- 1.1.2 The Schedules form part of this Agreement and any reference to this Agreement includes the Schedules.
- 1.1.3 Any reference to this Agreement is deemed to include any Order accepted by the Supplier and any Letter of Engagement agreed pursuant to these terms and conditions.

1.2 Conflicts

- 1.2.1 The Proposal, the VSA Specification (where applicable) and the Schedules to this Agreement, together with any documents referred to in them, form an integral part of this Agreement and any reference to this Agreement means this Agreement together with the Proposal, Statements of Work, the VSA Specification and Letters of Engagement (as applicable) and the Schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
- 1.2.2 If any conflict arises between the terms and conditions of this Agreement and the Proposal, the VSA Specification (where applicable) and any provision of any Schedule, the following descending order of precedence shall apply:

- (a) in respect of the IT Solution, the Proposal, Statement of Work and any accepted Order;
- (b) in respect of the Volume Support Agreement, the VSA Specification, any Letter of Engagement and any accepted Orders;
- (c) the Schedules; and
- (d) the terms and conditions of this Agreement.

2. SCOPE

2.1 IT Solution

2.1.1 The Supplier shall supply the IT Solution to the Customer and its Affiliates, in accordance with this Agreement, and such IT Solution shall be comprised of the following:

- (a) the Hardware;
- (b) the Software;
- (c) the Services; and
- (d) the Documentation.

2.1.2 The Price for the IT Solution is specified in the Proposal.

2.1.3 The supply under Clause 2.1 and Price are subject to the terms and conditions set out in this Agreement.

2.2 Volume Support Services

2.2.1 Where the Customer requires Volume Support Services, the Supplier shall supply such Volume Support Services in accordance with Schedule 5 (*Volume Services Agreement*).

2.2.2 The VSA Unit Charges payable by the Customer for the Volume Support Services are set out in the VSA Specification.

3. DURATION

3.1 This Agreement shall commence on the Commencement Date and shall continue, [unless terminated earlier in accordance with Clause 28], until the later of:

3.1.1 the date that the IT Solution is completed under the last Statement of Work; or

3.1.2 where the parties have agreed that the Supplier shall provide the Volume Support Services to the Customer, the date of expiry or earlier termination of the Volume Services Agreement.

3.2 The Supplier shall commence the supply of the Volume Support Services to the Customer on the VSA Start Date and shall, subject to Clause 3.3 below, perform such services for the VSA Term.

3.3 Following the end of the VSA Term and subject to paragraphs 4.3 and 4.4 of Schedule 5 (*Volume Services Agreement*), the Volume Support Services will be automatically renewed on an annual basis ("**Renewal Period**"), unless the Supplier receives thirty (30) days' notice in writing from the

Customer such notice to expire at the end of the VSA Term (or any subsequent Renewal Period (as applicable)) that it does not wish to renew the Volume Support Services.

4. BASIS OF CONTRACT

- 4.1 The provision of a purchase order by the Customer to the Supplier shall be deemed to be an offer by the Customer to purchase the IT Solution and the Volume Support Services (where applicable) from the Supplier subject to the terms and conditions of this Agreement (an "**Order**").
- 4.2 An Order shall only be deemed to be accepted when either the Supplier expressly gives notice of acceptance of the Order or impliedly accepts the Order by performing the Services or delivering the Hardware and/or Software in the case of an IT Solution, or performing the Volume Support Services under a Volume Services Agreement.
- 4.3 This Agreement applies to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 4.4 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of fourteen (14) days from its date of issue.

5. IT SOLUTION: PERSONNEL

- 5.1 No later than five (5) days after the Commencement Date, the Customer shall notify the Supplier of the name and qualifications of the person appointed as the Customer Representative.
- 5.2 The Supplier shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the IT Solution and to whom all questions regarding this Agreement can be referred. The name and qualifications of the appointed individual shall be notified in writing to the Customer Representative.
- 5.3 The Customer Representative shall co-operate with the Project Manager and shall attend meetings scheduled by the Project Manager at reasonable intervals agreed between the parties but not less than once a week to advise and assist the Supplier on all matters relating to the IT Solution.
- 5.4 The Supplier undertakes that its employees and contractors, while on the Site(s) or any other premises of the Customer, whether for the performance of the IT Solution, Training or otherwise, will comply with all relevant rules and regulations laid down by the Customer from time to time for the behaviour of its own employees and contractors, as notified to the Supplier in advance and in writing by the Customer. The Supplier shall remove any employee or contractor whom the Customer can reasonably demonstrate has deliberately failed to comply with such rules, regulations and requirements.
- 5.5 The provision of employees, subcontractors and agents of the Supplier to carry out the Supplier's obligations under this Agreement shall be at the discretion of the Supplier.
- 5.6 The Supplier agrees that the Project Manager and [SPECIFY KEY STAFF] shall not be replaced before the Acceptance Date without notice to the Customer, unless:
 - 5.6.1 the individual to be replaced is prevented by ill-health from carrying out his duties in connection with the Agreement for a significant period;
 - 5.6.2 the individual resigns from employment with the Supplier;
 - 5.6.3 the contract of employment of the individual is terminated; or

- 5.6.4 the Customer makes a reasonable, written request to the Supplier to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Supplier's obligations under this Agreement howsoever arising.
- 5.7 If any such person is replaced, the Supplier shall consult with the Customer Representative about the identity of a suitable replacement.
- 5.8 The Customer agrees that the Customer Representative and [SPECIFY KEY STAFF] shall not be replaced before the Acceptance Date without notice to the Supplier, unless:
 - 5.8.1 the individual to be replaced is prevented by ill-health from carrying out his duties in connection with the Agreement for a significant period;
 - 5.8.2 the individual resigns from employment with the Customer;
 - 5.8.3 the contract of employment of the individual is terminated; or
 - 5.8.4 the Supplier makes a reasonable, written request to the Customer to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Customer's obligations under this Agreement howsoever arising.
- 5.9 The Customer shall consult with the Project Manager about the identity of a suitable replacement.

6. IT SOLUTION: STATEMENTS OF WORK

- 6.1 In respect of the IT Solution, each Statement of Work will be agreed in the following manner:
 - 6.1.1 the Supplier shall provide the Customer with a draft Statement of Work setting out the requirements and specifications of the Services and any Hardware and/or Software to be provided;
 - 6.1.2 the Supplier and the Customer will discuss and agree the draft Statement(s) of Work; and
 - 6.1.3 when a Statement of Work has been agreed, the parties shall both execute a copy of it.
- 6.2 Once a Statement of Work has been agreed and executed in accordance with Clause 6.1, no amendment shall be made to it except in accordance with Clause [11.5.1] (unless otherwise provided in this Agreement).

7. IT SOLUTION: HARDWARE

- 7.1 The Supplier shall supply all items of Hardware, together with all related Documentation provided by third-party manufacturers of such of Hardware.
- 7.2 The Customer shall provide all cabling and other equipment needed for the installation of the Hardware at the Site(s), including any equipment needed to connect and interface the Hardware with the Customer Hardware unless otherwise agreed by the parties in the Proposal.
- 7.3 The Supplier shall use its reasonable endeavours to arrange delivery of the items of Hardware to the Site(s) by the applicable Hardware Delivery Dates but any such dates shall be estimates only and time shall not be of the essence for such delivery.
- 7.4 Following installation by the Supplier of each item of Hardware at the Site, the Supplier shall carry out the Hardware Installation Tests applicable to that item.

- 7.5 If any item of the Hardware fails to pass the applicable Hardware Installation Tests then the Supplier shall use its reasonable endeavours to remedy the deficiency, and the relevant test(s) shall be repeated within a reasonable time.

8. IT SOLUTION: HARDWARE WARRANTIES

- 8.1 The warranties given in this Clause 8 are in addition to warranties given in other parts of this Agreement.
- 8.2 The Supplier warrants that:
- 8.2.1 the Hardware will be new (except where otherwise specified in the Proposal) and meet the Technical Specification in all material respects; and
 - 8.2.2 as far as it is able, the Supplier will pass on to the Customer the benefits of any Manufacturers' Warranties in respect of the Hardware.

9. IT SOLUTION: SOFTWARE AND DOCUMENTATION

- 9.1 The Supplier shall deliver the Software to the Site(s) on or before the applicable Software Delivery Date for that item but any such dates shall be estimates only and time shall not be of the essence in relation to such delivery.
- 9.2 The Supplier shall carry out the Work with reasonable diligence, skill and care to provide the Software in accordance with the Technical Specification by the Completion Date.
- 9.3 The Supplier shall provide the Software to the Customer and its Affiliates (as applicable) under the Third-Party Licences provided by the relevant third party licensor(s), copies of which shall be made available to the Customer, and the Customer agrees to be bound to the relevant third party licensor(s) by such licence terms and to use reasonable endeavours to ensure that its Affiliates are bound to the relevant third party licensor(s) (as applicable).
- 9.4 The Supplier shall provide to the Customer from time to time copies of the Documentation containing sufficient up-to-date information for the proper use of the IT Solution. Such Documentation may be supplied in electronic form.
- 9.5 The Customer may make such further copies of the Documentation as are reasonably necessary for the use of the IT Solution and for training the Customer's personnel to use the IT Solution. The Customer shall ensure that all the Supplier's (or its licensor(s)) proprietary notices are reproduced in any such copy.
- 9.6 The Customer may provide copies of the Documentation to any third party referred to in Clause 21.3 who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation in accordance with Clause 21.3.

10. IT SOLUTION: SERVICES

- 10.1 On the terms and conditions set out in this Agreement, the Supplier agrees to:
- 10.1.1 perform the Services using reasonable care and skill;
 - 10.1.2 deliver and install the Hardware and Software at the Site(s);
 - 10.1.3 integrate the Hardware, Customer Hardware, Software and Customer Software to form the IT Solution;

- 10.1.4 carry out, in conjunction with the Customer, the Acceptance Tests;
 - 10.1.5 provide the IT Solution Ready for Service by the Completion Date; and
 - 10.1.6 provide the training specified in the Implementation Plan at the rates provided for in that plan pursuant to Clause 17 (or as otherwise agreed between the parties).
- 10.2 The Supplier shall at all times comply with its Mandatory Policies which shall include its anti-bribery policy.

11. IT SOLUTION: DELIVERY, INSTALLATION AND DELAYS

- 11.1 The Supplier shall supply to the Customer, within a reasonable time before any Hardware Delivery Date or Software Delivery Date, such information and assistance as may be necessary to enable the Customer to prepare the Site(s) for the installation of the relevant item of Hardware or Software.
- 11.2 The Customer shall, at its own expense, prepare the Site(s) in accordance with the information provided by the Supplier in advance of each Hardware Delivery Date or Software Delivery Date. The Customer may at its costs request reasonable assistance from the Supplier to carry out such preparation.
- 11.3 The Supplier shall use its reasonable endeavours to complete installation of each item of Hardware and Software at the Site(s) by the Installation Date for that item of Hardware or Software.
- 11.4 The Customer shall be responsible for ensuring that each item of Customer Hardware and Customer Software is installed and is in working order and available to the Supplier no later than the relevant date specified in the Implementation Plan.
- 11.5 If any delivery is delayed at the request of, or because of the acts or omissions of, the Customer, the Implementation Plan shall be amended to take account of such delay in accordance with Clause 14.5. If the Supplier can demonstrate by documentary evidence that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under this Agreement, the Supplier may, at its sole discretion, notify the Customer that it wishes to increase the Price by an amount not exceeding any such demonstrable cost. The Supplier may invoice the Customer for any additional monies that become payable in this way within thirty (30) days of demonstrating the increase in costs.
- 11.6 The Supplier shall use its reasonable endeavours to provide the IT Solution Ready for Service on or before the Completion Date.

12. IT SOLUTION: ACCEPTANCE TESTS

- 12.1 No later than thirty (30) days from the date of signature of this Agreement (or such other period as the parties may agree), the Customer shall deliver to the Supplier proposed test criteria for the Acceptance Tests for the IT Solution. These test criteria shall be such as are reasonably required to show that the IT Solution complies with the Technical Specification. The Supplier shall provide the Customer with reasonable assistance to prepare such test criteria at the Customer's request and cost. The parties shall endeavour to agree the Acceptance Tests for the IT Solution within ten (10) days from the date of delivery to the Supplier of the proposed criteria.
- 12.2 Within ten (10) days of its Installation Date (or such other period as the parties may agree), the Acceptance Tests shall be carried out by the Supplier. The Supplier shall give the Customer at least twenty four (24) hours' notice of the start of the Acceptance Tests. Where the IT Solution passes the Acceptance Tests, the Customer shall sign the Project Sign Off Sheet.

- 12.3 If the IT Solution fails to pass the Acceptance Tests, Phoenix Software shall promptly notify the Customer and in any event, within five (5) days from the completion of the Acceptance Tests, or any part of these tests, provide a written notice to this effect, giving details of such failure(s) to the Customer. The Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.

13. IT SOLUTION: ACCEPTANCE

Acceptance of the IT Solution shall be deemed to have occurred on whichever is the earliest of:

- 13.1 the signing by the Customer of a Project Sign Off Sheet, such signature to verify that all Acceptance Tests for the IT Solution have been passed;
- 13.2 the expiry of five (5) days after the completion of all the Acceptance Tests, unless any written notice under Clause 12.3 has been given; or
- 13.3 the use of the IT Solution by the Customer in the normal course of its Business.

14. IT SOLUTION: IMPLEMENTATION PLAN AND EXTENSION OF TIME

- 14.1 Both parties shall perform their obligations under this Agreement in accordance with the Implementation Plan.
- 14.2 The Supplier shall use its reasonable endeavours to complete the Work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to Clause 14.3.
- 14.3 The Supplier shall be given an extension of time for completion of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:
- 14.3.1 a variation to the IT Solution is made at the Customer's request under the change control procedures set out in Clause 15 or Clause 16;
- 14.3.2 a force majeure event occurs as described in Clause 38; or
- 14.3.3 delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third party contractors.
- 14.4 If the Supplier is entitled to an extension of time under Clause 14.3, it shall give written notice to the Customer not later than seven (7) days after the beginning of the event. Such notice shall specify the event relied on and, in the case of a force majeure event under Clause 38, shall estimate the probable extent of the delay.
- 14.5 The Customer Representative and the Project Manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Implementation Plan shall be deemed amended accordingly.

15. IT SOLUTION: CHANGES AND TECHNOLOGY SUBSTITUTION

- 15.1 The Customer may request changes to the IT Solution in accordance with the procedures set out in Clause 16.
- 15.2 The Supplier shall be entitled to offer to the Customer, [which the Customer shall be obliged to take in the event of a third party error with that Hardware or software,] at any time before the relevant Hardware Delivery Date or Software Delivery Date, any item of hardware or software in substitution for any corresponding item of the IT Solution or if the Supplier needs to make a substitution due to a

third party error with that Hardware or Software, where the substitute item contains new technology or has better performance characteristics. The Supplier shall notify the Customer of any change in the Price which would result from such substitution and the parties shall use reasonable endeavours to agree and execute a Change Agreement in accordance with Clause 16.

16. IT SOLUTION: CHANGE CONTROL

- 16.1 The Customer may, by giving written notice to the Supplier at any time during the term of this Agreement, request a change to the IT Solution.
- 16.2 Within fourteen (14) days of receipt of such notice, the Supplier shall, at its standard rates then in force, prepare for the Customer a written estimate of any increase or decrease in the Price, and of any effect that the requested change would have on the Implementation Plan.
- 16.3 Within seven (7) days of receipt of the written estimate referred to in Clause 16.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a written Change Agreement specifying, in particular, any changes to the Implementation Plan and Price.

17. IT SOLUTION: TRAINING

- 17.1 The Supplier undertakes to provide the Training to the Customer in consideration of the Training charges specified in the Proposal or as otherwise agreed between the parties in writing.
- 17.2 Any additional training required by the Customer shall be provided by the Supplier at the Supplier's standard rates then in force.
- 17.3 Training shall be carried out at the Site(s), or as may otherwise be agreed by the Supplier. Any special equipment necessary for the Training shall be provided by the Supplier.

18. VOLUME SUPPORT SERVICES

If following Acceptance, the Customer requires the provision of Volume Support Services from the Supplier to support and maintain the IT Solution, the Customer shall place an Order with the Supplier for such Volume Support Services and the provisions of Schedule 5 (*Volume Services Agreement*) shall apply.

19. PAYMENT

- 19.1 In respect of the IT Solution, the Supplier shall submit invoices to the Customer in accordance with the payment milestones specified in the Proposal or as otherwise agreed between the parties in writing.
- 19.2 Where the Supplier is providing Volume Support Services to the Customer, the Customer shall pay the VSA Unit Charges annually in advance as set out in the VSA Specification and/or Letter of Engagement (as applicable).
- 19.3 The Customer shall pay each invoice submitted by the Supplier:
 - 19.3.1 within thirty (30) days of the date of the invoice; and
 - 19.3.2 in full and in cleared funds to a bank account nominated in writing by the Supplier from time to time, and

time for payment by the Customer shall be of the essence of this Agreement.

- 19.4 The Price, VSA Unit Charges and all other payments are stated net of tax. The Customer shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT, which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under the Agreement (other than tax on the Supplier's income).
- 19.5 If the Customer fails to make any payment due to the Supplier under this Agreement by the due date for payment, then without limiting the Supplier's remedies under Clause 28, the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 19.6 In respect of the IT Solution:
- 19.6.1 all invoices issued by the Supplier under or in connection with this Agreement shall be accompanied by a sufficiently detailed breakdown of the matters being invoiced (including any additional costs and expenses under Clause 19.6.2);
- 19.6.2 reasonable out-of-pocket costs and expenses incurred by the Supplier shall be included in the Price for the IT Solutions, unless the parties agree otherwise or as specified in the Proposal;
- 19.6.3 if the Supplier visits the Site(s) at the Customer's request to investigate a failure of the IT Solution, which proves in the Supplier's reasonable opinion not to have been caused by a Defect, the Supplier may charge the Customer for the time spent on such visit on a time-and-materials basis at its standard rates then in force;
- 19.6.4 if the Customer requests in writing that the provision of the Services by the Supplier be cancelled altogether (and the Supplier agrees in writing to that cancellation):
- (a) less than [forty-eight (48)] hours before the planned start time of the Services as set out in the Implementation Plan: 100% of the Price payable for the cancelled Services shall be payable by the Customer;
 - (b) between [forty-eight (48) hours and five (5)] working days before the planned start time of the Services as set out in the Implementation Plan: 50% of the Price payable for the cancelled Services shall be payable by the Customer; and
 - (c) in excess of [five (5)] working days before the planned start time of the Services as set out in the Implementation Plan, the Price for those Services shall not apply.
- 19.6.5 if the Customer requests that the provision of the Services by the Supplier be delayed or postponed to a later date but confirms that the Services are still required (and the Supplier agrees in writing to that delay or postponement):
- (a) less than [twenty-four (24) hours] before the planned start time of the Services being provided as set out in the Implementation Plan: 100% of the Price payable for the delayed/postponed Services shall be payable by the Customer;
 - (b) between [twenty-four (24) and forty-eight (48)] hours before the planned start time of the Services being provided as set out in the Implementation Plan: 50% of the Price payable for the delayed/postponed Services shall be payable by the Customer; and

- (c) between [forty-eight (48) hours and five (5)] working days before the planned start time of the Services as set out in the Implementation Plan: 25% of the Price payable for the delayed/postponed Services shall be payable by the Customer but if in excess of [five (5)] working days' notice is provided by the Customer, the Price for those delayed or postponed Services shall not be payable until such time that the Supplier performs (or agrees to perform) such delayed or postponed Services, whereupon the Price shall be invoiced by the Supplier in accordance with the payment milestones specified in the Proposal (or as otherwise agreed between the parties in writing).

For the avoidance of doubt, any amount payable by the Customer pursuant to Clauses 19.6.4 and 19.6.5 shall be in addition to the Price payable to the Supplier by the Customer for the performance of the Services.

- 19.7 If the Customer requests that the provision of the Services by the Supplier be cancelled, delayed or postponed then, in addition to the amount payable under Clauses 19.6.4 and 19.6.5 above, any committed costs and expenses which cannot be cancelled or otherwise reasonably avoided, including any and all Hardware and Software acquired by or on behalf of the Supplier, shall be payable in full by the Customer.
- 19.8 Any termination, delay or postponement of the Volume Support Services shall be governed by paragraph 5 of Schedule 5 (*Volume Services Agreement*).
- 19.9 All amounts due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

20. INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE LICENCE

- 20.1 If the Supplier develops any Tools, software and/or documentation in the supply of the IT Solution and for the Volume Support Services to the Customer (including in relation to any configuration of the Software and/or Customer Software) any and all Intellectual Property Rights developed by or on behalf of the Supplier in those Tools, software and/or documentation shall vest automatically upon their creation in the Supplier. The Supplier reserves the right to grant a licence to use such Intellectual Property Rights to any other party or parties.
- 20.2 Except as set out in Clause 20.1, the Software and the Documentation are proprietary to the appropriate third-party licensor(s) and the Customer acquires no rights in or to the Software or the Documentation other than those expressly granted by this Agreement.
- 20.3 The Customer shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that the Supplier may consider necessary or desirable to perfect the right, title and interest of the Supplier in and to any Intellectual Property Rights developed by the Supplier under this Agreement.
- 20.4 The Customer shall comply with the Third-Party Licences and shall indemnify and hold the Supplier harmless against any loss of damage which it may suffer or incur as a result of the Customer's (or its Affiliate's) breach of such terms howsoever arising.
- 20.5 The Supplier may treat a breach of any Third-Party Licence by the Customer and/or its Affiliates as a breach of this Agreement.
- 20.6 To the extent that the Supplier developed any software and/or documentation under Clause 20.1, the Supplier grants, subject to the terms of this Agreement, the Customer and its Affiliates (as applicable) the non-exclusive, revocable and non-transferable right to use such software and/or documentation solely to use and receive the benefit of the IT Solution or the Volume Support Services (as applicable).

21. CONFIDENTIALITY AND PUBLICITY

21.1 Each party undertakes not to use the other party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement ("**Permitted Purposes**").

21.2 In relation to the Customer's Confidential Information:

21.2.1 the Supplier shall treat as confidential all Confidential Information of the Customer supplied under this Agreement. The Supplier shall not divulge any such Confidential Information to any person except to its own personnel, and then only to those personnel who need to know it for the Permitted Purposes. The Supplier shall ensure that its personnel are aware of, and comply with, this Clause 21; and

21.2.2 the Supplier may provide any subcontractor authorised under Clause 27 with such of the Customer's Confidential Information as it needs to know for the Permitted Purposes, provided that such sub-contractor has first entered into a written obligation of confidentiality owed to the Supplier in terms similar to Clause 21.2.1 (which the Supplier shall ensure is adhered to).

21.3 In relation to the Supplier's Confidential Information:

21.3.1 the Customer shall treat as confidential all Confidential Information of the Supplier contained or embodied in the IT Solution or Documentation, or otherwise supplied to the Customer during the performance of this Agreement;

21.3.2 the Customer shall not, without the prior written consent of the Supplier, divulge any part of the Supplier's Confidential Information to any person other than:

(a) the Customer's Representative; and

(b) other employees of the Customer or any of its Affiliates who need to know it for the Permitted Purposes; and

21.3.3 the Customer undertakes to ensure that the persons mentioned in Clause 21.3.2 are made aware, before the disclosure of any part of the Supplier's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer in terms similar to Clause 21.3.1 (which the Customer shall ensure is adhered to).

21.4 The restrictions imposed by Clause 21.1, Clause 21.2 and Clause 21.3 shall not apply to the disclosure of any Confidential Information which:

21.4.1 is now in, or hereafter comes into, the public domain otherwise than as a result of a breach of this Clause 21;

21.4.2 before any negotiations or discussions leading to this Agreement was already known by the receiving party (or, in the case of the Customer, any of its Affiliates) and was obtained or acquired in circumstances under which the receiving party was (or, in the case of the Customer, the Customer and its Affiliates were) not bound by any form of confidentiality obligation; or

21.4.3 is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).

- 21.5 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall offer reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 21.6 Nothing in this Agreement shall prevent the Supplier from using any Tools or any knowledge of which is contained in the unaided memory of its personnel or those of its Affiliates which it has developed or disclosed under this Agreement, provided that in doing so the Supplier does not breach its obligations of confidentiality under this Clause 21 or breach any Intellectual Property Rights of the Customer. An individual's memory is only "unaided" with respect to any information if the individual has not retained a copy of the information and has not intentionally memorised that information other than is required to perform the Services or the Volume Support Services.
- 21.7 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 21.8 This Clause 21 shall remain in full force and effect in the event of any termination of this Agreement.

22. DATA PROTECTION

- 22.1 To the extent that the Supplier is acting as a processor for and on behalf of the Customer in relation to any activity that it is carrying out for the Customer under this Agreement, the terms of Schedule 2 (*Data Processing*) shall apply.
- 22.2 The Customer shall indemnify and hold harmless the Supplier (and its Affiliates) for any and all damages, losses, liabilities, costs (including legal costs), charges, expenses, actions, adverse judgments, proceedings, claims, penalties, fines and demands incurred or suffered by or brought or made against the Supplier (or any of its Affiliates) which arises out of, or in connection with, the Customer or its Affiliate's breach of Schedule 2 (*Data Processing*).

23. EXPORT

- 23.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 23.2 Each party undertakes:
- 23.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - 23.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

24. WARRANTIES

- 24.1 In respect of the IT Solution, the Supplier warrants that:

- 24.1.1 the IT Solution at the Acceptance Date will perform in accordance with the Technical Specification in all material respects;
 - 24.1.2 it will perform the Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by a sufficient number of competent personnel with appropriate skills, qualifications and experience; and
 - 24.1.3 it is in compliance with, and will perform the Services in compliance with, all applicable law and regulations.
- 24.2 The sole remedy for breach of the warranty under Clause 8.2 and this Clause 24 shall be correction of Defects by the Supplier within a reasonable time from notification by the Customer of the Defect that constitutes such breach. Except where Clause 12 applies during the Acceptance Test process, all Defects must be notified by the Customer to the Supplier within thirty (30) days of the Customer becoming aware of such Defect.
- 24.3 The warranties set out in Clause 24.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement. Without limitation, the Supplier specifically denies any implied or express representation that the IT Solution will be fit:
- 24.3.1 to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified in the Documentation as being compatible with the IT Solution; or
 - 24.3.2 to operate uninterrupted or error-free.
- 24.4 The Supplier does not warrant or guarantee that in respect of the IT Solution it will be able to rectify all Defects, nor will it rectify any Defect which, in the Supplier's reasonable opinion, does not materially affect the Customer's use of the IT Solution.
- 24.5 Any unauthorised modifications, use or improper installation of the IT Solution by or on behalf of the Customer shall render all the Supplier's warranties and obligations under this Agreement null and void.
- 24.6 The Customer acknowledges that the only warranties in relation to the Third-Party Software or the supply thereof are those contained in the licence from the third-party supplier(s) of the same, and that to the extent that any of such warranties are given to the Supplier, it will pass on the benefit of such warranties to the Customer.
- 24.7 If at any time the Volume Support Services do not meet the requirements specified in the VSA Specification, the provision of paragraphs 2.5 and 2.6 of Schedule 5 (*Volume Services Agreement*) shall apply.
- 24.8 The Supplier shall not be obliged to rectify any particular Defect in respect of the IT Solution or matter or malfunction in respect of the Volume Support Services as set out in paragraph 2.5 of Schedule 5 (*Volume Services Agreement*) if attempts to rectify such Defect, matter or malfunction other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the prior written permission of the Supplier.
- 24.9 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents, to enter into and perform this Agreement, and that those signing this Agreement are duly authorised to bind the party for whom they sign.

25. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 25.1 The Supplier shall indemnify the Customer against all direct costs, expenses, liabilities, damages and losses suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights which arise out of any Intellectual Property Rights developed by the Supplier under Clause 20.1, provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity ("**Claim**"), the Customer:
- 25.1.1 as soon as reasonably practicable, gives written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 25.1.2 does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
 - 25.1.3 gives the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 25.1.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 25.2 Without prejudice to Clause 24.5, the Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:
- 25.2.1 caused or contributed to by the Customer's use of the IT Solution or receipt of the Volume Support Services in combination with hardware or software not supplied or approved in writing by the Supplier;
 - 25.2.2 where the claim for infringement arises in respect of a feature of the IT Solution or the Volume Support Services which was specified by the Customer.
- 25.3 If use of the IT Solution or receipt of the benefit of the Services or the Volume Support Services becomes or is likely to become, the subject of any such claim, the Supplier may:
- 25.3.1 replace all or part of the IT Solution with functionally equivalent software or documentation without any charge to the Customer;
 - 25.3.2 modify the IT Solution or the Volume Support Services as necessary to avoid such claim, provided that the IT Solution and the Volume Support Services (as amended) function in substantially the same way before such modification was made;
 - 25.3.3 procure for the Customer a licence from the relevant claimant to continue using the IT Solution or receiving the benefit of the Volume Support Services or receiving the benefit of the Volume Support Services.
- 25.4 If the Supplier is unable, after best efforts, to procure for the Customer the right to continue using the IT Solution or to receive the benefit of the Volume Support Services, or to provide the Customer with

functionally equivalent non-infringing software, this Agreement will be terminated by the Supplier upon notice in writing to the Customer.

- 25.5 Notwithstanding any other provision in this Agreement, Clause 25.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Customer Software, the Software or through the breach of any Third-Party Licence relating to any Software by the Customer or any of its Affiliates howsoever arising.
- 25.6 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
- 25.7 All Intellectual Property Rights in or arising out of or in connection with the Volume Support Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned solely and absolutely by the Supplier or its licensors. The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable basis to such extent as is necessary to enable the Customer to receive the Volume Support Services as is envisaged by this Agreement. If the Supplier terminates this Agreement under Clauses 28.1 and 28.2, this licence will automatically terminate without notice.
- 25.8 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Supplier for the term of this Agreement for the purpose of providing the IT Solution and the Volume Support Services to the Customer.

26. LIMITATION OF LIABILITY

- 26.1 Neither party excludes or limits liability to the other party for:
- 26.1.1 fraud or fraudulent misrepresentation;
 - 26.1.2 death or personal injury caused by negligence;
 - 26.1.3 a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 26.1.4 any matter for which it would be unlawful for the parties to exclude liability.
- 26.2 Subject to Clause 26.1, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- 26.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - 26.2.2 any loss or corruption (whether direct or indirect) of data or information;
 - 26.2.3 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - 26.2.4 any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 26.3 Clause 26.2 shall not prevent claims, which fall within the scope of Clause 26.4, for:

- 26.3.1 direct financial loss that are not excluded under any of the categories set out in Clause 26.2.1 to Clause 26.2.4; or
- 26.3.2 tangible property or physical damage.
- 26.4 Subject to Clause 26.1, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with the performance or contemplated performance of this Agreement or any collateral contract in respect of the IS Solution shall be limited to the amount of the Price.
- 26.5 Subject to Clause 26.1, the Supplier's total liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with the performance or contemplated performance of this Agreement or any collateral contract in respect of the Volume Support Services:
- 26.5.1 during the VSA Term shall be limited to the aggregate amount of the VSA Unit Charges paid or payable by the Customer for the Volume Support Services during the VSA Term; and
- 26.5.2 during each Renewal Period shall be limited to the aggregate amount of the VSA Unit Charges paid or payable by the Customer for the Volume Support Services during the Renewal Period in which the claim in question arises.
- 26.6 Any dates quoted for delivery under this Agreement are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the foregoing that is caused by an event, circumstance or cause within the scope of Clause 38 or the Customer's failure to provide the Supplier with adequate delivery instructions.

27. ASSIGNMENT AND SUBCONTRACTING

- 27.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 27.2 Subject to Schedule 2 (*Data Processing*), the Supplier shall be entitled to subcontract any or all of its rights and obligations under this Agreement.

28. TERMINATION

- 28.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement with immediate effect by giving written notice to the other party if:
- 28.1.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
- 28.1.2 the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- 28.1.3 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

- 28.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 28.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 28.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 28.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party or a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 28.1.8 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 28.1.4 to Clause 28.1.7 (inclusive); or
- 28.1.9 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 28.2 Either party may terminate this Agreement in accordance with Clause 38.
- 28.3 Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its termination.
- 28.4 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, including Schedule 1 (*Interpretation*), Clause 21 to Clause 26, and Clause 28 shall remain in full force and effect.
- 28.5 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 28.6 Notwithstanding its obligations in this Clause 28, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 28.7 On termination of this Agreement for any reason, each party shall as soon as reasonably practicable:
- 28.7.1 return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by its authorised representative) no later than fourteen (14) days after termination of this Agreement that these have been destroyed and that it has

not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in Clause 21);

- 28.7.2 permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation (in the form of a letter signed by its authorised representative) no later than fourteen (14) days after termination of this Agreement that this software has been deleted;
- 28.7.3 return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this Clause 28.7.3, that the Customer has (if appropriate) paid the Supplier in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.
- 28.8 On termination of this Agreement howsoever arising, any Statement of Work, Volume Services Agreement (including any Letters of Engagement) in force at the date of such termination shall also terminate automatically without notice.
- 28.9 On termination of this Agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any items of the IT Solution and/or any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.
- 28.10 Termination of a Letter of Engagement shall not affect any other Letter of Engagement or this Agreement.

29. NON-SOLICITATION

During the term of this Agreement and for a period of six (6) months after its expiry or termination neither party shall, without the prior written consent of the other, solicit, or permit any Affiliate or third party to solicit, the employment of any person who is employed or engaged by the other party:

- 29.1 in the course of designing, developing and implementing the IT Solution or any part of it; or
- 29.2 in respect of the provision of the Volume Support Services.

30. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

31. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

32. ENTIRE AGREEMENT

- 32.1 This Agreement, the Proposal, Statements of Work, VSA Specification and Letters of Engagement (as applicable) constitute the entire Agreement between the parties and supersedes and

extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

32.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

32.3 Nothing in this Clause 32 shall limit or exclude any liability for fraud or fraudulent misrepresentation.

33. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

34. SEVERANCE

34.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

34.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

35. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

36. THIRD-PARTY RIGHTS

No person other than a party to this Agreement shall have any rights to enforce any term of this Agreement.

37. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

38. FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for thirty (30) days or more, the party not affected may terminate this Agreement by giving seven (7) days' written notice to the affected party.

39. NOTICES

- 39.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party at the address specified above (or such other address as a party may notify to the other in writing from time to time).
- 39.2 Any notice shall be deemed to have been duly received:
- 39.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;
 - 39.2.2 if sent by pre-paid first-class post or recorded delivery, at 10:00am on the second Business Day after posting; or
 - 39.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 39.3 A notice required to be given under this Agreement shall not be validly given if sent by e-mail.
- 39.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

40. DISPUTE RESOLUTION

- 40.1 Any dispute which may arise between the parties concerning this Agreement shall be determined as provided in this Clause 40.
- 40.2 For the purpose of this Clause 40, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.
- 40.3 Unless this Agreement has already been terminated by the date of the notice of dispute, the Supplier shall, in every case, continue with the performance of the Services or the Volume Support Services (as the case may be) with all due diligence regardless of the nature of the dispute and the Customer shall continue to make payments in accordance with the terms and conditions of this Agreement and the Proposal in respect of the IT Solution or the VSA Specification in respect of the Volume Support Services.
- 40.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this Clause 40.4 shall be extendable by mutual agreement):
- 40.4.1 within five (5) Business Days, the Project Manager and the Customer Representative shall meet to attempt to settle the dispute;
 - 40.4.2 if the Project Manager and the Customer Representative are unable to reach a settlement within ten (10) Business Days from the date of service of the notice, the managing directors of each of the parties shall meet within the following ten (10) Business Days to attempt to settle the dispute; and
 - 40.4.3 if no settlement results from the meeting specified in Clause 40.4.2 for the following twenty eight (28) days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.
- 40.5 If no settlement is reached under Clause 40.4:

- 40.5.1 in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English High Court in the most expeditious manner possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings; and
- 40.5.2 in any other case, the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes.

41. GOVERNING LAW AND JURISDICTION

- 41.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 41.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

SCHEDULE 1

Definitions and Interpretation

- 1.1 In this Agreement, unless the context indicates otherwise, the following expressions have the following meanings:

Acceptance Date	the date on which the IT Solution is accepted in accordance with Clause 13.
Acceptance Tests	the tests of the IT Solution after installation to be agreed in accordance with Clause 12.1 and Schedule 3 (<i>Acceptance Tests for IT Solution</i>).
Affiliate	any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours	the hours from 09:00am to 17:30pm on Business Days.
Change Agreement	an agreement made under Clause 16.
Commencement Date	[INSERT DATE].
Completion Date	the estimated date specified in the Implementation Plan (which may be varied in accordance with Clause 14) by which the Supplier is to provide the IT Solution Ready for Service.
Confidential Information	information of commercial value, in whatever form or medium, disclosed by one party (or any of its Affiliates) to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and, for clarity, including (in the case of the Supplier's information), information pertaining to customers, pricing and marketing information relating to the IT Solution or any of its constituent parts or the Volume Support Services.
Customer Hardware	all the computers and other equipment to be supplied by the Customer as set out in the Proposal or as otherwise specified by the Supplier in writing from time to time.
Customer Representative	a person duly authorised by the Customer to act on its behalf for the purposes of this Agreement and identified to the Supplier by written notice from the Customer.
Customer Software	the software programs to be supplied by the Customer as specified in the Proposal or as otherwise noted by the Supplier in writing from time to time.
Defect	an error or other defect occurs such that the IT Solution does not perform in accordance with the Technical Specification at the Acceptance Date in all material respects.

Dispute Resolution Procedure	the procedure for dealing with disputes under this Agreement as set out in Clause 40.
Documentation	the third party operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied from time to time by the Supplier in respect of the Hardware and Software as specified in the Proposal or as otherwise provided to the Customer by the Supplier from time to time.
Good Industry Practice	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
Hardware	the third party hardware listed in the Proposal which are to be provided by the Supplier to the Customer without modification as part of the IT Solution.
Hardware Delivery Date	the estimated delivery date specified in the Implementation Plan, on which the Supplier will arrange for the delivery of an item of Hardware to the Site.
Hardware Installation Tests	the tests set out in the Proposal or as otherwise agreed between the Parties in writing.
Implementation Plan	the time schedule and sequence of events for the performance of this Agreement set out in the Proposal or as otherwise notified in writing by the Supplier to the Customer, which may be varied in accordance with Clause 14.
Installation Date	the estimated date by which the Supplier will complete installation of a specified item of Hardware or Software as specified in the Implementation Plan.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
IT Solution	the Hardware, Software and Services to be provided by the Supplier to the Customer under this Agreement as a solution (but not the Volume Support Services).
Letter of Engagement	means a letter of engagement in such form as the Supplier may determine and which is entered into by the parties from time to time for the provision of consultancy services by the Supplier to the Customer

	as part of the Volume Support Services under the Volume Services Agreement.
Mandatory Policies	the Supplier's business policies and codes from time to time in force (which shall include the Supplier's expenses policy and anti-bribery policy) as amended by the Supplier from time to time.
Manufacturers' Warranties	the warranties given by any third-party manufacturer in relation to any item of the Hardware and/or Software.
Normal Working Hours	the hours from 08.30 to 17.30 on a Business Day.
Order	has the meaning given in Clause 4.1.
Outside Working Hours	the hours outside of Normal Working Hours on any day including a Business Day.
Permitted Purposes	has the meaning given in Clause 21.1.
Price	the aggregate price for the Hardware, Software, Services and Training as specified in the Proposal or as otherwise agreed by the Supplier in writing.
Project Manager	the Supplier employee appointed under Clause 5.2 who has overall responsibility for the IT Solution.
Project Sign Off Sheet	the certificate to be signed by the Customer under Clause 13.1.
Proposal	the detailed plan and scope of work describing the Hardware, Software and Services to be provided by the Supplier to the Customer as the IT Solution.
Ready for Service	installed, tested and having passed or deemed to have passed the Acceptance Tests under Clause 12.
Renewal Period	has the meaning given to it in Clause 3.3.
Service Level Agreement	means the service levels applicable to the provision of certain Volume Support Services as set out in the VSA Specification or as otherwise agreed in writing by the Supplier as part of its delivery under a Volume Services Agreement.
Services	the services to be provided by the Supplier under this Agreement in respect of an IT Solution but not the Volume Support Services.
Site(s)	the location(s) at which the IT Solution is to be installed as specified in the Proposal.
Software	the third party software programs listed in the Proposal which are to be provided by the Supplier to the Customer as part of the IT Solution.
Software Delivery Date	the estimated delivery date specified in the Implementation Plan on which the Supplier will deliver the Software to the Site(s).

Statement of Work	means the template statement of work in the form provided by the Supplier which describes the IT Solution to be provided by the Supplier to the Customer under this Agreement (or such other document as the Supplier may provide to the Customer from time to time).
Supplier Representatives	means the Supplier and any individuals whom it engages in connection with the Volume Support Services.
Technical Specification	the specification of the IT Solution contained in the Proposal or as otherwise agreed in writing between the parties as attached to this Agreement as Schedule 4 (<i>Technical Specification for the IT Solution</i>).
Third-Party Licences	any and all proprietary third party software licences for the Software from time to time in force.
Tools	any tools and know-how developed and methods created by the Supplier in the course of, or as a result of, the performance of its obligations under this Agreement, whether or not developed or created specifically or used exclusively for the Customer.
Training	the training as specified in the Proposal, to be provided by the Supplier as part of the Services or as otherwise agreed in writing between the parties.
VAT	value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.
Volume Services Agreement and VSA	where requested by the Customer as specified in Clause 18, the Volume Support Services to be provided by the Supplier to the Customer as more particularly described in the VSA Specification, a Letter of Engagement (as applicable) and Schedule 5 (<i>Volume Services Agreement</i>).
Volume Support Services	means the hardware and software technical support services provided by the Supplier to the Customer which shall include: <ul style="list-style-type: none"> (a) initial solution design and server assessment services (where applicable); (b) telephone support services; (c) remote support help desk services; (d) remote support consultant services; (e) on-site consultancy services; (f) on-site consultancy services (out of hours); (g) on-site consultancy/ Sunday support services; (h) project management services; and

- (i) software audit/asset management services,
or any of them as more particularly described in the VSA Specification or a Letter of Engagement (as applicable).

VSA Specification means the description of the Volume Support Services to be provided by the Supplier to the Customer together with the:

- (a) VSA Unit Charges; and
- (b) the Service Level Agreement.

VSA Start Date the date from which the Supplier shall provide the Volume Support Services to the Customer as specified in the applicable Order or a Letter of Engagement.

VSA Term the period commencing on the VSA Start Date and ending twelve (12) consecutive months later.

VSA Unit Charges the charges payable by the Customer to the Supplier for the VSA Units in accordance with Clause 19 subject to any increase in charges in accordance with paragraph 4.4 of Schedule 5 (*Volume Support Agreement*).]

VSA Units the number of units purchased in advance by the Customer for the provision of the Volume Support Services by the Supplier as described in the VSA Specification, together with such additional units as the Customer may purchase from the Supplier from time to time.

- 1.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.7 Except where a contrary intention appears, a reference to a clause, schedule or appendix is a reference to a Clause of, or Schedule or Appendix to, this Agreement.
- 1.8 Clause and schedule headings do not affect the interpretation of this Agreement.
- 1.9 **Writing** or **written** includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary.
- 1.10 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

SCHEDULE 2

Data Processing

1. DEFINITIONS AND INTERPRETATION

1.1 In this Schedule the following expression shall have the following meanings:

- | | |
|----------------------------------|--|
| "Data Processing Details" | the description of the Personal Data processing activities contemplated by this Agreement, as set out in the Annex to this Schedule 2 (<i>Data Processing</i>) or the Proposal (as the case may be). |
| "Data Protection Law" | the Data Protection Act 2018 and all applicable laws and regulations from time to time in force relating to data protection, privacy and the processing of personal data, including the GDPR. |
| "DP Regulator" | a regulatory, administrative, supervisory or governmental agency, body or authority (whether regional, national or supranational) with jurisdiction over the Personal Data processing activities contemplated by this Agreement. |
| "GDPR" | the European General Data Protection Regulation, namely Regulation (EU) 2016/679. |
| "Loss" | any and all loss, liability, cost (including legal costs), expenses, actions, adverse judgement, proceedings, claims, penalties, fines and demands and Losses shall be construed accordingly. |
| "Personal Data" | the personal data that is processed by the Supplier on behalf of the Customer in accordance with this Agreement, as further described in the Data Processing Details. |
| "Safe Countries" | the countries that comprise the EEA, and in the event that the United Kingdom or any part of it falls outside the EEA, those countries and the United Kingdom or that part of it. |
| "Security Incident" | (a) the unlawful or unauthorised processing of Personal Data; or

(b) any breach of security affecting the Personal Data (including (without limitation) a personal data breach as defined in the GDPR). |
- 1.2 Unless the context otherwise requires **"controller"**, **"processor"**, **"processing/process"**, **"personal data"**, **"personal data breach"** and **"data subject"** shall be interpreted and construed by reference to Data Protection Law.

1.3 References to a law of the European Union include a reference to that law as incorporated into the laws of the United Kingdom at any time before or after the United Kingdom ceases to be a Member State of the European Union.

2. DATA PROTECTION

2.1 The parties hereby agree that, to the extent the Supplier processes Personal Data on behalf of the Customer, the Supplier will act as a processor for and on behalf of the Customer (as controller). A

detailed description of the data processing activities, including the Personal Data concerned, is set out in the Data Processing Details.

2.2 To the extent that the Supplier acts as a processor for the Customer with respect to the Personal Data, the Supplier shall:

- 2.2.1 only process the Personal Data for the purposes of performing its obligations under this Agreement and in accordance with the written instructions given by the Customer from time to time, unless the Supplier is subject to an obligation under applicable law (including Data Protection Law) of the UK, European Union or a member state of the European Union to do otherwise, in which case the Supplier shall (unless prohibited by law on important grounds of public interest) notify the Customer in advance of that legal obligation;
- 2.2.2 immediately inform the Customer if, in the Supplier's opinion, an instruction from the Customer breaches a requirement of Data Protection Laws, provided that the foregoing obligation shall not be construed as an obligation on the Customer to provide legal or professional advice or services to the Customer and the Supplier shall have no liability for any Losses suffered or incurred by the Customer as a result of the Supplier's failure to notify the Customer as set out in this paragraph;
- 2.2.3 at the reasonable request of the Customer (and at the Customer's expense), provide to the Customer such reasonable assistance as is contemplated by Article 28(3)(e) of the GDPR;
- 2.2.4 notify the Customer in writing of each Security Incident of which it becomes aware as soon as reasonably practicable and in any event within forty eight (48) hours. The Supplier shall (to the extent feasible) ensure that the initial notification comprises the information required under Article 33(3) of the GDPR. In the event that the Supplier is unable to provide all of the information required under this paragraph in accordance with the time limits set out above, the Supplier shall provide as much information as it is able to within those time limits and shall provide all further information as soon as reasonably practicable thereafter;
- 2.2.5 taking into account the nature of the processing and the information available to the Supplier, upon the reasonable request of the Customer, and at the Customer's sole cost and expense, the Supplier shall, within such reasonable timescales as the Supplier agrees in writing, provide the Customer the following assistance:
 - (a) provide the Customer with information in order to enable the Customer to produce data protection impact assessments ("**DPIAs**");
 - (b) taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, in relation to the Personal Data, assist the Customer in implementing appropriate security measures appropriate to that risk;
 - (c) where a DPIA requires provide the Customer with information required in relation to consulting the DP Regulator; and
 - (d) following a Personal Data breach:
 - (i) provide the Customer with such information as is necessary to allow the Customer to notify data subjects; and
 - (ii) provide the Customer with such information as is required under Article 33(3) of the GDPR.

- 2.2.6 ensure that appropriate technical and organisational measures are in place to safeguard against the unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data and such measures shall meet the requirements of Article 32 of the GDPR;
 - 2.2.7 ensure that any of its personnel who are authorised to process the Personal Data are bound by a duty of confidence to maintain the confidentiality of the Personal Data;
 - 2.2.8 upon conclusion of the Personal Data processing activities contemplated by this Agreement, the Supplier will (as directed by the Customer or, in the absence of any direction, as elected by the Supplier) securely return or securely destroy the Personal Data and all copies in the Supplier's power, possession or control, unless the Supplier is required to keep such Personal Data for its compliance with applicable law.
- 2.3 Subject to paragraph 2.4, the Supplier shall provide the Customer with all information reasonably requested by the Customer to enable the Customer to verify the Supplier's compliance with this paragraph 2. Without prejudice to the foregoing and upon one month's prior written notice from the Customer, the Supplier shall assist the Customer in undertaking an audit of the Supplier's compliance with the requirements of this paragraph 2 with respect to the Personal Data, provided that the scope of the audit and manner in which it is conducted will be agreed between the parties in advance and shall ensure such audit does not adversely affect the Supplier's operations. The Customer shall act reasonably and in good faith in exercising its audit rights under this paragraph 2.3 and the Supplier's costs and expenses incurred in assisting the Customer with each audit shall be borne by the Customer. The Customer's audit rights as set out in this paragraph 2.3 shall not be exercised by the Customer more frequently than once a year.
- 2.4 The provisions of paragraph 2.3 shall not apply to the extent that the Supplier has commissioned an independent third party audit which addresses the same audit scope as described at paragraph 2.3 within six (6) months of the Customer's audit request and the Supplier confirms there are no known material changes in the processing audited. In such circumstances the Customer agrees to accept those findings in lieu of requesting an audit.
- 2.5 The Customer acknowledges that the Supplier may transfer Personal Data outside of the Safe Countries. The Supplier shall ensure that, where such transfers take place, safeguards are put in place in order to comply with Data Protection Law and the Customer agrees to provide such assistance as is reasonably required by the Supplier to ensure such transfer complies with such Data Protection Law.
- 2.6 The Supplier may subcontract the processing of Personal Data to any third party (each subprocessor). The Supplier shall notify the Customer of each subprocessor that it intends to subcontract the processing of Personal Data to. If within fourteen (14) days of receipt of that notice, the Customer notifies the Supplier in writing of any objections to the proposed appointment (such objections to be made on reasonable grounds which shall be limited to a reasonable belief of the Customer that the requirements of paragraph 2.7 have not been satisfied), the Supplier shall not appoint (nor disclose the Customer's Personal Data to) that proposed subprocessor until reasonable steps have been taken to address the objections raised by the Customer and the Customer has been provided with a reasonable written explanation of the steps taken. The Customer acknowledges and agrees that any objection raised by the Customer may cause or contribute to a delay or failure by the Supplier and/or its subprocessor to perform the Supplier's obligations under this Agreement, and that the Supplier shall not be liable for any Losses suffered or incurred by the Customer arising out of or in connection with any such delay or failure.
- 2.7 With respect to each subprocessor the Supplier will ensure that it has in place an agreement with the subprocessor that provides no less protection for Personal Data than those set out in paragraph 2. The Supplier shall remain responsible for the acts and omissions of its subprocessors.

- 2.8 This paragraph 2 shall remain in full force and effect at all times, notwithstanding the termination or expiry of this Agreement.

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ANNEX

Data Processing Details

(A)	Subject matter, nature and purpose of the processing of Personal Data under the Agreement	<p>Subject matter</p> <p>The provision of [insert description of services] by the Supplier to the Customer.</p> <p>Nature</p> <p>Processing activities, such as [insert the data processing activities to be undertaken – eg: retrieval, analysis, data collection] will all be undertaken by the Supplier.</p> <p>Purpose</p> <p>Personal Data is processed in order to [insert purpose of the provision of the processing].</p>
(B)	Duration of the processing of Personal Data under the Agreement	<p>[Insert details of how long Personal Data will be processed for under the Agreement (e.g. For the term of the Agreement unless the Agreement is terminated earlier in accordance with its terms)]</p>
(C)	Type of Personal Data processed under the Agreement	<p>Personal Data</p> <p>[Insert categories of Personal Data processed – eg: contact data (name, address, email address, phone numbers), gender, behavioural data, demographic data].</p> <p>Special Categories of Personal Data</p> <p>[Insert details of any special categories of Personal Data that are processed – ie: Personal Data relating to racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning sex life or sexual orientation]. OR [None.]</p> <p>Criminal Records Data</p> <p>[Insert details of any criminal records data that is processed]. OR [None.]</p>
(D)	Categories of data subjects of the Personal Data processed under the Agreement	<p>[Insert details of the categories of the individuals to whom the Personal Data relates – eg: past, present and prospective personnel/other users].</p>

SCHEDULE 3

Acceptance Tests for the IT Solution

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SCHEDULE 4

Technical Specification for the IT Solution

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SCHEDULE 5

Volume Services Agreement

In addition to the terms and conditions set out in Clauses 1 to 41 (inclusive) of this Agreement, the parties agree that the following additional provisions shall apply to the Volume Support Services.

1. ORDER PROCESS FOR VOLUME SUPPORT SERVICES

- 1.1 Where the Customer requires the Volume Support Services:
 - 1.1.1 the parties shall agree the VSA Specification;
 - 1.1.2 each time the Customer requires the performance of consultancy services as part of the Volume Support Services, the parties shall enter into a Letter of Engagement as set out in paragraph 1.2 below; and
 - 1.1.3 the Customer shall place an Order with the Supplier in accordance with Clause 4.1 of this Agreement for such Volume Support Services.
- 1.2 The parties agree that a Letter of Engagement will be agreed in the following manner:
 - 1.2.1 the Supplier shall provide the Customer with a draft Letter of Engagement setting out the consultancy services to be provided as part of the Volume Support Services together with the number of VSA Unit Charges required for the performance of those consultancy services;
 - 1.2.2 the Supplier and the Customer will discuss and agree the draft Letter of Engagement; and
 - 1.2.3 when a Letter of Engagement has been agreed, the parties shall both execute a copy of it.

2. VOLUME SUPPORT SERVICES

- 2.1 The Supplier shall provide the Volume Support Services to the Customer on a non-exclusive basis in accordance with the terms and conditions of this Agreement and the provisions of this Schedule 5 (*Volume Services Agreement*).
- 2.2 The Supplier reserves the right to amend the Volume Support Services and the VSA Unit Charges if there is any significant change to the scope of work identified in the VSA Specification and/or the Letter of Engagement, provided any such amendment is agreed in writing by both parties.
- 2.3 Notwithstanding any provision to the contrary in this Agreement, the VSA Specification or a Letter of Engagement, the Supplier further reserves the right to amend the Volume Support Services and the VSA Unit Charges if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Volume Support Services, and the Supplier shall notify the Customer in any such event.
- 2.4 The Supplier shall use reasonable endeavours to:
 - 2.4.1 meet any performance dates specified in the VSA Specification or a Letter of Engagement (as applicable), but any such dates shall be estimates only and time shall not be of the essence for performance of the Volume Support Services;
 - 2.4.2 provide the Volume Support Services:

- (a) in accordance with the VSA Specification and the Service Level Agreement;
 - (b) with reasonable care and skill and in all material respects; and
- 2.4.3 ensure that all Supplier Representatives that are involved in the provision of the Volume Support Services to the Customer are reasonably competent and qualified for the purpose for which they are required.
- 2.5 The Supplier's liability in relation to the provision of any Volume Support Services which do not meet the requirements specified in the VSA Specification (or a Letter of Engagement (as applicable)) shall be limited to the re-performance of those Volume Support Services by the Supplier; provided always that such matter is brought to the attention of the Supplier by the Customer within thirty (30) days of the date of the original performance of the Volume Support Services, together with the Customer providing such satisfactory supporting evidence as the Supplier may reasonably require. The Supplier shall have no liability for any:
 - 2.5.1 matters which arise from defective installations, upgrades and/or migrations performed by the Customer (or by a third party); or
 - 2.5.2 malfunctions of the Customer's system infrastructure or operating system,unless such matter or malfunction is caused by the Supplier.
- 2.6 In circumstances where additional services to the Volume Support Services are required to correct any matters or malfunctions caused by the Customer (or by a third party) as referred to in paragraphs 2.5.1, 2.5.2 and/or 3.2 of this Schedule 5 (*Volume Services Agreement*), the Supplier may (at its reasonable discretion) perform services which are in addition to any Volume Support Services specified in the VSA Specification (or a Letter of Engagement) and the Customer shall pay for such additional services at the Supplier's then current rates in accordance with Clause 16 of this Agreement.
- 2.7 Unless agreed otherwise in writing, the Supplier shall perform the Volume Support Services at the locations specified in the VSA Specification (or the Letter of Engagement (as applicable)) on Business Days during Normal Working Hours unless Outside Working Hours have been specified for the provision of certain Volume Support Services in the VSA Specification (or the applicable Letter of Engagement).

3. ADDITIONAL REQUIREMENTS FOR VOLUME SUPPORT SERVICES

- 3.1 Where the Customer requires the provision of the Volume Support Services, the Customer shall:
 - 3.1.1 ensure that its requirements specified in the VSA Specification and the Letter of Engagement and any information provided as part of an Order are complete and accurate;
 - 3.1.2 ensure that any assumptions made by Supplier Representatives regarding the Volume Support Services that the Customer is aware of are accurate;
 - 3.1.3 co-operate with the Supplier Representatives in all matters relating to the Volume Support Services including in relation to any site surveys which the Supplier may require in respect of the Volume Support Services (such survey to be at the Customer's cost and expense unless otherwise agreed by the Supplier);
 - 3.1.4 provide Supplier Representatives with sufficient time for any testing and verification of the performance of the Volume Support Services that Supplier Representatives deem necessary;

- 3.1.5 provide Supplier Representatives with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier Representatives;
 - 3.1.6 prepare the Customer's premises and equipment for the supply of the Volume Support Services, including making available any hardware and software (with licence keys) required for the performance of the Volume Support Services;
 - 3.1.7 ensure that where the provision of Volume Support Services requires the use of, or access to, the Customer's server and networking equipment, sufficient capacity is available to Supplier Representatives (including, without limitation, electricity lines or cables, control or main fuses, energy supply, rack space, UPS, network ports and cabling);
 - 3.1.8 obtain and maintain all necessary licences, permissions and consents which may be required for the Volume Support Services before the VSA Start Date;
 - 3.1.9 comply with all applicable laws, including health and safety laws; and
 - 3.1.10 comply with any additional obligations as set out in the VSA Specification (or a Letter of Engagement (as applicable)).
- 3.2 If the Supplier's performance of any of its obligations in relation to the supply of Volume Support Services under this Agreement is prevented, hindered or delayed by any act or omission by the Customer or any failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 3.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Volume Support Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve the Supplier from the performance of any of its obligations in each case to the extent the Customer Default prevents, hinders or delays the Supplier's performance of any of its obligations;
 - 3.2.2 the Supplier shall not be liable for any costs, expenses, losses, liabilities or damages whatsoever which are sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this paragraph 3.2 of this Schedule 5 (*Volume Services Agreement*); and
 - 3.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

4. SPECIFIC PAYMENT TERMS FOR THE VOLUME SUPPORT SERVICES

- 4.1 All VSA Unit Charges are inclusive of any expenses incurred by Supplier Representatives in connection with the Volume Support Services which the Supplier shall be entitled to charge to the Customer at cost unless specified otherwise in the VSA Specification or the applicable Letter of Engagement. Such expenses may include, without limitation, travelling expenses, hotel costs, subsistence and any associated expenses, the cost of any Volume Support Services provided by third parties and required by the Supplier for the performance of the Volume Support Services, and for the cost of any materials.
- 4.2 If at any time during the VSA Term or any Renewal Period the Customer uses up all of the VSA Units it has purchased in advance from the Supplier for the Volume Support Services, the Customer may purchase additional VSA Units from the Supplier. Additional VSA Units purchased by the Customer during the VSA Term or any Renewal Period shall be charged at the rate of the VSA Unit Charges paid by the Customer to the Supplier during the VSA Term or applicable Renewal Period (as the case may be).

4.3 If, upon the expiry or earlier termination of the VSA Term or any Renewal Period, the Customer has not used up all of the VSA Units it has purchased in advance from the Supplier for the Volume Support Services, the Customer shall not:

4.3.1 be entitled to receive a refund for any unused VSA Units; or

4.3.2 carry over any unused VSA Units for use during any Renewal Period.

4.4 The Supplier reserves the right to increase its current list prices for the VSA Unit Charges upon the commencement of each Renewal Period.

5. SPECIFIC TERMS FOR THE TERMINATION, DELAY OR POSTPONEMENT OF THE VOLUME SUPPORT SERVICES

5.1 If the Customer requests that the provision of the Volume Support Services by the Supplier be delayed, postponed or cancelled:

5.1.1 less than forty-eight (48) hours before the planned start time of the Volume Support Services being provided: 50% of the VSA Unit Charges payable for the delayed, postponed or cancelled Volume Support Services shall be payable by the Customer; and

5.1.2 less than twenty four (24) hours before the planned start time of the Volume Support Services being provided: 100% of the VSA Unit Charges payable for the delayed, postponed or cancelled Volume Support Services shall be payable by the Customer.

5.2 If the Customer requests that the provision of the Volume Support Services by the Supplier be delayed/postponed/cancelled then in addition to the charges set out in paragraph 5.1, any committed costs and expenses which cannot be cancelled or otherwise reasonably avoided by the Supplier shall be payable by the Customer. Any amount payable under paragraph 5.1 shall be in addition to any VSA Unit Charges charged by Phoenix Software for the performance of any such delayed, postponed or cancelled services.

Signed by **[NAME OF DIRECTOR]** for and on behalf of
PHOENIX SOFTWARE LIMITED

.....
Director

Signed by **[NAME OF DIRECTOR]** for and on behalf of
[NAME OF CUSTOMER]

.....
Director

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