

ACCESS UK LIMITED

G-CLOUD 12 TERMS AND CONDITIONS

BACKGROUND

1. We are a provider of Access Products and You wish to be provided with AccessProducts.
2. You wish to be provided with Access Product, technical support, and the benefit of IT consulting services onrequest;
3. The parties have agreed that these Terms and Conditions and the relevant Statement of Work(s) will collectively make up the Framework Agreement (as more particularly defined below) and will apply to the supply of Access Products by Us to You.

THIS G-CLOUD 12 AGREEMENT COMPRISES OF

1. G cloud 12 Framework Agreement;
2. G Cloud 12 call off contract;
3. These Terms and Conditions, being:
 - 3.1 **Background, Definitions and Interpretations**
 - 3.2 **Core Terms** at Schedule 1: these govern the relationship between Us and You across any Access Product.
 - 3.3 **Product Specific Terms** at Schedule 2: these apply only to the extent that We are to provide You with that Access Product.

DEFINITIONS AND INTERPRETATION

In this Agreement (including the Statements of Work) the following expressions shall have the following meanings:

Acceptable Use Policy	means the following policy which is available here: https://www.theaccessgroup.com/media/22917/acceptable-use-hostingsaas-v3.pdf
Access Product	means SaaS, Software (including components or modules that are owned by Us and made available under this Agreement either on premise or in the cloud), FlightPath, Direct Debit, Hosting Infrastructure Services, Managed Services, Variable Consumed Services or other product or service provided by Us to You. Where multiple Access Products are purchased the definition shall apply to multiple Access Products.
Access Success Plans	means any packaged Support service that is specified in the Statement of Work;
Agreement	means the Framework Agreement, as described above;
Annual Licence Fees	means the fee payable for the Licence in each 12 month period, as set out in clause 3;
Authorised User	means any person that You have authorised to use an Access Product;
Business Days	means Monday to Friday excluding bank holidays and public holidays in England;
Business Hours	means the hours of 0900 to 1700 (BST or GMT as applicable) on Business Days;
CaaS	Content as a Service means means the cloud based online Access Product as set out in a Statement of Work.
CaaS Content Maintenance Statement	means the following statement which is available here: Content Maintenance Statement
Confidential Information	means any information, however conveyed or presented that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by the party as being confidential to it (whether or not it is marked "confidential information"), or which ought reasonably be considered to be confidential;
Consulting Services	means the consultancy services specified in an applicable Statement of Work and may include, but not be limited to, Flightpath, training, implementation, configuration, integration and or general IT consultancy services;
Customer System	means Your computer equipment, operating system, computer network infrastructure hardware and associated telecom links and networks;
Customer Materials	means any material provided or made available by or on behalf of You to Us for the purposes of incorporation into the SaaS for You, including any registration data supplied by You but excluding Customer Data;
Documentation	means documents or on-line help (provided in any media) relating to the Access Product which may be updated from time to time. This definition includes the documents within the Schedules to this Agreement;
Effective Date	has the meaning set out clause 1.5;
End User	means the person who uses the relevant Access Product;
Event of Insolvency	means the situation in which a party becomes insolvent, has an insolvency practitioner appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution for it to be wound up (otherwise than in the furtherance of a scheme for solvent amalgamation or reconstruction), or an analogous event occurs in respect of a party in any jurisdiction to which that party is subject;
Fees	means the Annual Licence Fee, Initial Licence Fee, Support Fees, SaaS Fee, and fees for Services or any of them and any other fees, charges costs and expenses paid or payable under this Agreement by You;
FlightPath	means (if available) a defined implementation process for Access Product as set out in a Statement of Work and at https://www.theaccessgroup.com/flightpath-overviews/

Further Term	means a further term of 12 months commencing at the conclusion of the Initial Term or any Further Term;
Hosting Infrastructure Services	means the deployment set out in the relevant hosting Statement of Work;
Initial Licence	means, if applicable, the permission granted to the Licensee to hold the Software only but not access or use the Access Software.
Initial Term	means 36 months from the Effective Date;
Initial Licence Fee	means the fee for the Initial Licence (if applicable) as set out in the relevant Statement of Work;
Installation Date	means the sooner of go live or 90 days after the Effective Date;
Intellectual Property Rights	means all intellectual and industrial property rights, including patents, trademarks, logos, brand, company names, rights in databases, rights in designs, inventions, discoveries, know-how and copyrights (including rights in computer software) (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;
Licence	means the permission granted to the Licensee to Use (if applicable) the Access Product on the terms of this Agreement during the Term;
Licence Fee	means the fee payable for the Licence as specified in the Statement of Work (as may be amended from time to time in accordance with clause 2);
Licence Term	means the Initial Term plus any Further Term;
Licensee	means You and/or the Permitted Users;
Managed Server	means a hardware device that is hosted in a data centre by Us and provided to the Client for their use. We provide hardware support, rack space, power and network connectivity for such servers either directly or via an external hardware support provider which may be the vendor or an accredited third party.
Notice	means in accordance with clause 10.10;
Payroll Services	means payroll services as set out in the applicable Statement of Work;
Permitted Users	means the permitted entities of the Access Product which shall be You (excluding any Group Companies) or as set out in the Statement of Work;
SaaS	System as a Service means the cloud based online Access Product as set out in a Statement of Work;
SaaS SLA	means the following policy which is available via Our website:- https://www.theaccessgroup.com/media/25581/saas-sla-v12.pdf
Service Location	means the location(s) where the Services will be provided (as set out in the Statement of Work);
Services	means, as applicable, the Technical Support, Consulting Services, and Hardware Support to be provided by Us and as set out in Statements of Work;
Software	means Access Software and Third-Party Software specified in an applicable Statement of Work but, for the avoidance of any doubt, not including SaaS;
Specification	means (if any) each specification for the Access Product(s) as set out in the relevant Documentation and/or the Statement of Work;
Statement(s) of Work	means each statement of work specifying the Access Products to be supplied under this Agreement which incorporate these Terms and Conditions. For the avoidance of doubt, an order form signed by You will be a Statement of Work for the purposes of this Agreement;
Subscription	means the subscription purchased by You that authorises You to access and use the SaaS
Subscription Term	mean the term for which access to the SaaS is granted, as set out in the Statement of Work
Support Fee	means either the fee for the Technical Support as set out in a relevant Statement of Work, or in the case of Access Success Plans, the Access Success Plan Fee;
Technical Support	means technical operating support in relation to the operation and/or use of the Access Product(s);
Terms and Conditions	means these terms and conditions;
Third Party Software	means software or SaaS that is owned by a party other than either You or Us which may be supplied under this Agreement as specified in a Statement of Work;
Thresholds	means any thresholds for use of any Access Product set out in a Statement of Work;
Transfer Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any successor legislation;
Variable Consumed Services	means services which are chargeable as consumed and offered in conjunction with Our Access Product(s) subject to any minimums payment as included in a Statement of Work
Warranty Period	means the applicable warranty period for the Access Product(s) being 12 months from the start of the Initial Licence or SaaS provision, as the case may be, unless otherwise as set out in an applicable Statement of Work.
We (Us, Our)	means Access UK Limited or its subsidiary company as set out in the relevant Statement of Work.
You (Your)	means the customer as set out in the relevant Statement of Work.

SCHEDULE 1

CORE TERMS

1. USE OF ACCESS PRODUCTS

- 1.1. You acknowledge that any Access Products are provided on an “as is” basis and have not been prepared to meet Your individual requirements. It is Your responsibility to ensure the Access Products meet Your requirements.
- 1.2. The right to use (whether by Licence or otherwise) Access Products is granted to You, as identified by Your Companies House registration number, or other unique identifier, where applicable, and the right to use will transfer with You should Your ownership change, provided that the Company registration number does not change.
- 1.3. The Access Products may be used by the Permitted Users.
- 1.4. You acknowledge that the use of Access Products may be restricted by Thresholds. In the event of the excess usage above a Threshold, We will invoice You for the excess usage from the time the excess usage commenced in accordance with the prevailing rates.
- 1.5. You shall ensure the security and confidentiality of all log-on identifiers, including usernames, passwords or any other credentials, assigned to, or created by, You or any Authorised User in order to access or use any Access Product (an ID). You acknowledge and agree that You will be solely responsible for all activities that occur under such ID. You shall promptly notify Us upon becoming aware of any unauthorised access to or use of any Access Product and provide all reasonable assistance to Us to bring an end to such unauthorised access or use. Your ID is for Your internal use only and You may not sell, transfer or sublicense any ID to any other entity or person, except that you may disclose ID to Authorised Users in accordance with this Agreement.
- 1.6. You shall designate one contact and one alternate as the responsible party for communication with Us during any term of this Agreement (**Your System Administrator**). You may amend Your System Administrator by notice to Us from time to time.
- 1.7. You shall ensure that each Authorised User shall, as a condition of being granted access to an Access Product, be required by Your System Administrator to acknowledge the obligations on You under this Agreement respecting authorised use (and restrictions on use) of and agree to comply with the same. You shall immediately notify Us if You become aware of any breach of the terms of this Agreement or our Acceptable Use Policy by any Authorised User.
- 1.8. You will ensure that all Authorised Users comply with Your obligations under this Agreement, including our Acceptable Use Policy, and that the terms of any agreement entered into between You and an Authorised User for the use of the SaaS are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement by an Authorised User, you will immediately terminate such Authorised User's access to the SaaS. Except to the extent such actions cannot be prevented, You, any Authorised User and any Permitted User, shall not (nor permit any third party to) disassemble, decompile, modify, adapt, reverse engineer, merge or make error corrections to any Access Product, in whole or in part, or in any way expose the source code, instruction sequences, internal logic, protocols, or algorithms of any Access Product. Nothing in this clause shall prevent You from configuring interfaces and other elements in an Access Product which are intended by the parties to be configured by You.
- 1.9. You acknowledge that You have no right to have any Access Product in source code form or in unlocked coding of any kind. You agree that You must not attempt to (nor permit any third party, or agree to use any systems, process or software) intended to in any way remove or circumvent any security devices present within an Access Product.
- 1.10. You have no right to perform penetration testing on any Access Product without our prior written consent which will be subject to a specific penetration test access agreement.
- 1.11. Where Third Party Software is provided under this Agreement, We shall provide such software to You under the software licence terms provided by the third-party licensor of such software. Upon notification from us which we may do from time to time, You undertake to comply with the terms of any End User Licence Agreement for Third Party Software in relation to Third Party Software.

2. INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

- 2.1. You acknowledge that all Intellectual Property Rights (including any new Intellectual Property Rights) arising out of or in connection with the Access Products and associated Documentation, belong at all times to Us or Our licensors.
- 2.2. Nothing in this Agreement shall transfer any Intellectual Property Rights in or arising from Access Products or Documentation to You but that these shall remain vested in Us or Our licensors. No rights to use any such Intellectual Property are granted, except as expressly stated in these Terms and Conditions or the relevant Statement of Work. If, notwithstanding this, any Intellectual Property Rights in or arising from the Access Product and/or Documentation are acquired by You (including any new Intellectual Property Rights), You hereby assign (and to the extent that any such Intellectual Property Rights are not capable of such assignment, agree to hold on trust) and agree to do all such things and sign all such documents as We may reasonably require in respect of the assignment of all such Intellectual Property Rights to Us or Our licensors as may be appropriate.
- 2.3. Subject to clauses 5.6 and 5.7, We will indemnify You against all direct costs, claims, demands, expenses (including reasonable legal costs) and liabilities of whatever nature incurred by or awarded against You arising out of or in connection with any claim that Your use of the Access Product(s) any Documentation, information, data, computer facilities or material that We supply, infringes a third party's Intellectual Property (**Infringement Claim**).
- 2.4. We warrant that We are not aware that the Access Product(s) any Documentation, information, data, computer facilities or material that We supply, or Your use of the same in accordance with the terms of this Agreement will infringe any third party's Intellectual Property Rights but We have not carried out any investigation into the same. We shall indemnify You against all direct costs, claims, demands, expenses (including reasonable legal costs) and liabilities of whatever nature incurred by or awarded against You arising out of or in connection with any breach of the warranty contained in this clause.
- 2.5. If an Infringement Claim is alleged or threatened against either You or Us, or if We believe that the Access Product or the Documentation or any part thereof may infringe any third party's copyright or UK registered patent (effective at the date of this Agreement), We may, at

Our sole option, (i) procure such licence, authorisation or consent as is necessary to enable Your continued use of the Access Product and/or the Documentation; (ii) modify or replace the same as necessary to avoid infringement without any material adverse effect to the functionality of the Access Product; or (iii) terminate this Agreement and/or the affected Statement of Work and refund an amount equal to the unused portion of any Annual Licence Fees pre-paid in respect of such Software (as the case may be) to You.

- 2.6. You shall permit Us to have access upon reasonable Notice during the Licence Term to inspect during Business Hours the premises and the Customer System at or on which the Software is being kept or used, and any records kept pursuant to the Licence, for the purposes of ensuring that You are complying with the terms of this Agreement. In carrying out such an inspection we will comply with any reasonable restrictions you require, and we will only request such an inspection where we believe we have reasonable cause to do so. In the event that You have unauthorised copies of the Software, without prejudice to any other rights or remedies that We may have, You shall pay an additional fee to Us in respect of any such unauthorised copies calculated by reference to the standard list price prevailing at the date of invoice in respect of such Software.
- 2.7. We shall only be liable under the terms of this Agreement for an Infringement Claim or alleged Infringement Claim if (i) You promptly notify Us of any infringement or alleged infringement of which You have notice; (ii) You make no admission as to liability or agree any settlement of such claim without Our prior written consent; (iii) You allow Us (or a relevant third party supplier), at Our expense, to conduct and/or settle all negotiations and litigation arising from any claim or action relating to the alleged infringement; and (iv) You, at Our expense, give Us (or a relevant third party supplier) such reasonable assistance as may be requested in such settlement or negotiation.
- 2.8. We shall have no liability for any Infringement Claim or alleged Infringement Claim to the extent such claim (i) arises from possession, use, development, modification, or operation of the Access Product or part thereof by You other than in accordance with the terms of this Agreement or the relevant Statement of Work; (ii) failure by You to take any reasonable corrective action directed by Us (including using an alternative, non-infringing version of the Access Products); or (iii) is based upon any item provided by You and incorporated into the Access Product(s) at Your request.

SCHEDULE 2

PRODUCT SPECIFIC TERMS

1. SAAS

- 1.1. In consideration of and conditional upon the payment of the full payment of the SaaS Fee to Us (on the terms set out in the relevant Statement of Work) We grant You a non-exclusive, revocable, non-transferable right, without the right to grant sub-licences, to use the SaaS. Such right shall commence on the provision of the SaaS and shall continue for the Subscription Term.
- 1.2. We warrant that during the Warranty Period the SaaS, when used in accordance with the Documentation, will operate in all material respects in accordance with the Documentation and Specification (where applicable). We will obtain and at all times during the term of the Agreement maintain all necessary licences and consents and comply with all applicable laws and regulations relating to the SaaS. This warranty is further dependent on all Fees being paid up to date and You using current virus scanning software from time to time. This warranty does not cover minor errors that do not materially affect the functionality of the Software and, for the avoidance of doubt, We do not warrant that the operation of the SaaS will be uninterrupted or error free.
- 1.3. If agreed, We shall configure the SaaS (including any agreed incorporation of any Customer Materials and any agreed integration with Your systems). You will ensure that the Customer Materials are accurate, up-to-date and complete.
- 1.4. We reserve the right to add, delete, and amend features of the SaaS without notice. In relation to any APIs relating to the SaaS that we have changed or discontinued, we will use commercially reasonable efforts to continue supporting the previous version of any API so changed or discontinued, or for 12 months after the change or discontinuation (except if doing so (a) would pose a security or intellectual property issue, (b) is economically or technically burdensome, or (c) is needed to comply with the law or requests of governmental entities).
- 1.5. You understand that the SaaS may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by Us and/or content providers who provide content to the SaaS. You may not attempt to override or circumvent any of the usage rules embedded into the SaaS. Any unauthorised reproduction, publication, further distribution or public exhibition of Our Content, in whole or in part, is strictly prohibited.
- 1.6. You acknowledge and agree that We may derive or create anonymous data and information about the use of the SaaS by You and its Users (**Use Data**) and We may use and disclose Use Data to its third-party service providers in order to improve the SaaS.
- 1.7. You hereby grant to Us a non-exclusive, fully paid, world-wide and irrevocable license to use Customer Data as required to provide the SaaS, and to copy, anonymize, aggregate, process, and display Customer Data, to derive anonymous statistical and usage data related to the Service (**Anonymous Data**) to compile, combine or incorporate such Anonymous Data with or into other similar data and information available, derived or obtained from other clients, customers, licensees or users of Ours, or otherwise (collectively, Anonymous Data and such compiled, combined or incorporated data and information shall be referred to as **Aggregate Data**). Your grant of licence to Us to copy, anonymize, aggregate, process, use, and display Customer Data and Use Data shall survive the expiry or termination for this Agreement.
- 1.8. While We do not currently do so, We reserve the right to use the Aggregate Data to provide additional services to Our customers, including the copying, publication, distribution, display, licensing or sale of Aggregate Data and related or similar other statistics or data to third parties pursuant to a separate licensing or services arrangement or agreement. We will be the owner of all right, title and interest in and to Anonymous Data and Aggregate Data.
- 1.9. We will supply the SaaS in accordance with the SaaS SLA.

2. CAAS

- 2.1. In consideration of and conditional upon the payment of the full payment of the CaaS Fee to Us (on the terms set out in the relevant Statement of Work) We grant You a non-exclusive, revocable, non-transferable right, without the right to grant sub-licences, to use the CaaS. Such right shall commence on the provision of the CaaS and shall continue for the Subscription Term.
- 2.2. We will supply the CaaS in accordance with the CaaS Content Maintenance Statement.

3. SOFTWARE

- 3.1. In consideration of and conditional upon the payment of the Initial Licence Fee to Us, if applicable, and the continued payment of the Annual Licence Fee to Us (on the terms set out in the relevant Statement of Work), We grant the Licensee a non-exclusive, revocable, non-transferable Licence which shall commence on the date of this Agreement and shall continue for the Licence Term. The Software may not be used unless the Annual Licence Fee is paid in full.
- 3.2. You are permitted to make such copies of the Software as are reasonably required for the purposes of bona fide operational purposes, security and backup only and shall ensure that such copies are marked as proprietary to, copyright of, and licensed by, Us. No other copies may be made. You may not make any copies of the Documentation, manuals, or other documentation (including electronic documentation) other than for use by Permitted Users without Our written permission.
- 3.3. The Licensee can Use the Software to create and service up to five (5) databases (including any databases used exclusively for training, testing or disaster recovery). The Licence can be extended to service additional databases if You purchase additional Licence components from Us as agreed in a Statement of Work.
- 3.4. Unless explicitly stated otherwise in an applicable Statement of Work, the Licence covers the Use of the Software where the database(s) reside on a single SQL server instance only. Use of the Software is limited to the processing of Your/ Licensee's own data. For the avoidance of any doubt, You are not permitted to provide services to third parties using the Software.

- 3.5. The Software will be deemed as accepted by You unless You notify Us otherwise within sixty (60) days of installation or supply of the initial activation keys.
- 3.6. We shall provide You with upgrades relating to the Software for which you are validly licensed for free of charge and within a reasonable period of time following such upgrades becoming available. Services relating to the installation of such upgrades are normally subject to charge. Subject to payment of the relevant Support Fee, We shall provide Technical Support in respect of the version of the Software used by You from time to time in accordance with the terms set out of this Agreement.
- 3.7. We shall use reasonable endeavours in accordance with good industry practice to prevent the introduction of known computer viruses or other program code which is likely to damage the Software or the Customer System and will check each release of the Software with the same diligence as would be expected from an organisation similar to Us using up-to-date virus scanning software from time to time.
- 3.8. You shall use reasonable endeavours in accordance with good industry practice to prevent the introduction of any known computer viruses into the Customer System and will check each release of the Software with the same diligence as would be expected from an organisation similar to You using current virus scanning software from time to time.

4. SERVICES

CONSULTING SERVICES

- 4.1. We will perform the Consulting Services specified in the applicable Statement of Work.
- 4.2. In the event that You cancel or postpone the provision of any Consulting Service within five Business Days of the agreed start date then 100% of the Fees will be payable as a cancellation charge. If You cancel or postpone between six and nine Business Days of the agreed start date, then 50% of the Fees will be payable as a cancellation charge. Notwithstanding the foregoing, You shall reimburse us in full for all costs and expenses that We suffer or incur if You cancel or postpone any Services prior to the agreed start date.
- 4.3. This is a time and materials Agreement and where our obligations are extended by Your act or omission (which includes employees, agents, contractors or subcontractors (including the provision by any such person of any incorrect or inadequate data, information or instructions) which causes a delay or impediment to delivery which obliges us to spend additional time or incur additional expense in the performance of any of Our obligations under this Agreement then, notwithstanding anything else contained in this Agreement or Statement of Work, You will pay Us, at our current standard rates, for the additional time spent and reasonably incurred expenses in carrying out such obligations.
- 4.4. Unless expressly stated to the contrary, all Consulting Services detailed in a Statement of Work are estimates only and exclude actual travel and accommodation expenses which will be charged as incurred in line with our external expenses policy, a copy of which is available here: <http://www.theaccessgroup.com/privacy-and-legal/>. These terms may be updated from time to time.

TECHNICAL SUPPORT

- 4.5. Technical Support shall be provided from the Effective Date and continue during the Licence Term. For customers with an Access Success Plan, Technical Support will be delivered based on the level of Access Success Plan purchased. Where an Access Success Plan is not expressly specified within a Statement of Work, You will receive an Essential Success Plan. We will provide support services and service levels as specified in the Access Success Plan datasheet in effect at the start of the Effective Date. We reserve the rights to amend the Services specified within the Access Success Plan, provided that any such changes would only come into effect at the beginning of each renewal.
- 4.6. The Access Success Plan datasheet is available at <https://theaccessgroup.com/success-support-brochure>.
- 4.7. Technical Support is available via Our online service, subject to You enabling the required connections (in each case We shall determine the most effective medium for efficient support);
- 4.8. If You use third party consultants not approved by Us to configure the Access Product(s), We will have the right to charge You for Our Consulting Services to fix any configuration issues caused by those third parties and/or terminate Technical Support.
- 4.9. Where You purchase additional licences, sites or modules or otherwise expand upon any existing Statement of Work, any additional purchase shall have the same level of Success Plan and associated Fees, applied to that purchase.
- 4.10. Our obligation to provide the Technical Support shall not extend to:
 - 4.10.1. rectification of lost or corrupted data arising by reason other than Our (or Our suppliers') negligence;
 - 4.10.2. any supported Access Product(s) which has been changed, altered, added to, modified or varied by anyone other than Us;
 - 4.10.3. attendance to faults caused by Your failure to use the supported Access Product in accordance with the requirements of the Documentation and/or documentation or manuals supplied with the supported Access Product(s), or caused by operator error or omission;
 - 4.10.4. attendance to faults attributable to faults in the Customer System or its use or interaction with other software with which the Access Product(s) is not compatible or its use or interaction with Access Product or on equipment that We have not approved in writing.

HOSTING INFRASTRUCTURE SERVICES

- 4.11. We shall provide such Hosting Infrastructure Services requested by You which are agreed in a Statement of Work. If Your Hosting Infrastructure Services usage exceeds the number of Permitted Users, CPUs, storage or RAM (each as set out in the relevant Statement of Work), we will invoice You for the excess usage from the time the excess usage commenced in accordance with Our then current price book.
- 4.12. We shall ensure that Our provision of Our Hosting Infrastructure Services and You shall ensure that Your use of the Software Hosting Infrastructure Services complies in all respects with all applicable laws.

- 4.13. Our Hosting Infrastructure Services (as applicable) include:
- 4.13.1. dedicated, high availability firewalls to protect the private cloud;
 - 4.13.2. Managed backups within a multi-tenancy data vault with secure encrypted retention, disaster recovery is available;
 - 4.13.3. 24/7/365 automated monitoring, reporting and alerting; and
 - 4.13.4. 24/7/365 engineer availability.
- 4.14. All servers used to provide the Software Hosting Infrastructure Services are subject to Our current back-up and recovery procedures. Sufficient hardware is available to ensure continuity of service in event of total server failure with a target recovery time of 12 hours for any given server.
- 4.15. Service Level Targets: We will use all reasonable efforts to ensure that the Hosting Infrastructure Services are available for 99.70% of each calendar month. The Service will be deemed unavailable if it cannot be reached from a functioning Internet Connection. Any instances of unavailability shall have to be ratified by Our monitoring system.
- 4.16. The Hosting Infrastructure Services shall not be deemed unavailable (without limitation) in the event of any of the following:
- 4.16.1. Periods of scheduled maintenance;
 - 4.16.2. Failure by You or End User connection to the Network (e.g. via the public internet or your own network, or any 3rd party telecommunications tail circuits);
 - 4.16.3. Malfunction of yours or End User's own computing systems;
 - 4.16.4. Initial setup period, that is from date of signing this Agreement until commencement of Hosting Infrastructure Services or installation of the CaaS;
 - 4.16.5. Any period of service suspension caused by Your failure to comply with provisions of this Agreement.
- 4.17. After termination of this Agreement or an applicable Statement of Work We will:
- 4.17.1. maintain Your historic data for a mutually agreed time;
 - 4.17.2. assist and cooperate with You in a timely fashion to provide a data export in an acceptable format, however a reasonable charge may be applicable (as agreed in advance with You) if the data format is non-standard or time consuming; and
 - 4.17.3. assist You and/or Your nominated alternative provider in migrating the Customer Data at the relevant time in the format and on the media reasonably specified, however a reasonable charge may be applicable (as agreed in advance with You) if the data format is non-standard or time consuming.
- 4.18. If You have requested Hosting Infrastructure Services in a Statement of Work, the Service Level Provisions in 3.15 apply in addition to the following additional service level provisions:
- 4.18.1. Recovery Point Objective RPO is the maximum time period in which data might be lost, for SQL Server this is 12 hours, for a Single Virtual Machine this is 12 hours, for a Complete Primary Datacentre Outage this is also 12 hours.
 - 4.18.2. Recovery Time Objective RTO is the duration of working time within which Service should be restored after a disaster. This time starts from when a support call is logged with Us, for SQL Server this is 6 hours, for a Single Virtual Machine is 6 hours, for a Complete Datacentre Outage it is 12 hours.
- 4.19. Service Level Credits For Hosting Infrastructure Services
- 4.19.1. If We fail to achieve the Service Level Target for Hosting Infrastructure Services only, and if You request, We do so within twenty (30) Business Days after the target is not met, We will issue You service credits against future periods of service as detailed in the adjacent table.
 - 4.19.2. The MRC* (monthly recurring charges) used to calculate the Service credits will be the total monthly recurring charges relating to the affected Service.
 - 4.19.3. Service credits issued shall not survive termination of the relevant Statement of Work and are not applicable against other Fees.
 - 4.19.4. Performance against Service Level Targets will be reviewed and agreed on a quarterly basis by Our account management.

Service	Service Level Target for Hosting Infrastructure Services	Incident	Service Credit
Managed Server	6 Hour Hardware Replacement **	Hardware not replaced within 6 hours **	1-day subscription per hour of downtime (after 6 hours)*
Cloud Hosting	99.70% Uptime	Cloud Instance 'unavailable' during calendar month	1-hour subscription per hour of downtime*
Co-location	99.70% Uptime	Service 'unavailable' during calendar month	1-hour subscription per hour of downtime*
We Network	100% Uptime	The Network 'unavailable' during calendar month	1-hour subscription per hour of downtime*
Telephone Support Response	Engineer working on the problem	Within 30 minutes of notification of logging a critical issue.	1-hour subscription per hour of delay*

*Hour of downtime = hour or part thereof. MRC is the Monthly Recurring Charge for the Hosting Infrastructure Service, as detailed on the Order Form. 1-day subscription is calculated as the MRC divided by the number of days in the calendar month in which the incident occurs. The maximum Service Credit available in any calendar month is 100% of the MRC.

** Some hardware supplied may be subject to an extended replacement time from the vendor. In such cases the amended Service Level Target for that hardware will be specifically

referenced in the Confirmation of Requirements. In such a case the Service Level Target in the Confirmation of Requirements will take precedence over the Service Level Target specified in the table above.

SERVICES - GENERAL

- 4.20. We will perform all Services in accordance with good industry practices and will use appropriately skilled and qualified personnel.
- 4.21. You agree that We will be relying upon the accuracy of all representations, statements, information, materials and documents (**Data**) supplied by You in connection with the Services and that We shall be under no obligation to test, check or confirm the accuracy of any Data prior to performing the Services unless set out in the Statement of Work. We accept no responsibility or liability whatsoever for or resulting from any Data prepared and/or supplied by You or a third party on Your behalf.
- 4.22. You shall:
- 4.22.1. provide, where applicable, reasonable access to the areas in which the Services are to be performed at the Service Location, including authorised access to the Customer Systems or systems licensed to You to enable Our staff and associates to perform the Services and so that We can ensure that You are complying with the terms of this Agreement;
 - 4.22.2. provide, free of charge, appropriately qualified and experienced personnel familiar with the Customer Systems, equipment, programmes and operations who shall reasonably co-operate with Our personnel to allow Us to fulfil Our obligations under this Agreement and each Statement of Work if We request this from You;
 - 4.22.3. make available, free of charge, such documentation, information, data and computer facilities (including but not limited to data preparation facilities, storage and computer consumables) as We may reasonably require in the fulfilment of Our obligations under this Agreement and each Statement of Work;
 - 4.22.4. appoint a representative with responsibility for all matters relating to this Agreement and each Statement of Work; this representative will be identified in the Statement of Work;
 - 4.22.5. ensure that the Customer Systems comply with the agreed specification as set out in the relevant Statement of Work;
 - 4.22.6. remain responsible for all actions and inactions of any third-party provider directly in Your control or with whom You have a contractual relationship and with whom We will be or are reliant upon to fulfil Our obligations under this Agreement or a relevant Statement of Work;
- 4.23. Our ability to deliver the Services depends on Your full and timely cooperation and collaboration, as well as the accuracy and completeness of any information that You provide. You accept that the nature of implementation may require disruption to Your staff and business processes in order to accommodate the implementation.
- 4.24. We will remain responsible for all actions and inactions of any third-party provider directly in Our control or with whom We have a contractual relationship.

5. APS (ACCESS PAYROLL SERVICES)

- 5.1. Where We provide Payroll Services to You, we will use reasonable endeavours to comply with the relevant service levels set out at <https://www.theaccessgroup.com/media/15609/combined-sla.pdf>. While these service levels may be subject to change from time to time, any material changes will be notified to You.
- 5.2. Where We provide Payroll Services to You then if an employee alleges, or is held to have any rights or claims against Us pursuant to the Transfer Regulations, including in particular that their employment has, should or should have transferred to Us, whether or not they are an employee of You (a Transferring Employee), You shall be liable for and shall indemnify Us and hold Us harmless from and against the following, below. This indemnity also covers any such allegation, finding or claim made on behalf of a Transferring Employee by any representative:
- 5.2.1. all pay, salary, bonuses, commissions, benefits, holiday pay, employment benefit costs, contractual payments due (whether expressed or implied) statutory and/or contractual redundancy payments, protective awards, settlements, liability for wrongful and/or unfair dismissal and/or liability for discrimination awards claimed from and/or incurred by Us including all legal and professional fees incurred as a result of the claim or action. The sums referred to in this sub-paragraph shall include any and all Losses relating directly or indirectly to the terms and conditions of employment, pensions and/or life assurance arrangements, health, welfare or any other matters concerning the Transferring Employee or any other claims which the Transferring Employee may have against You or any third party in respect of any period before the transfer of the employment of the Transferring Employee to Us; and
 - 5.2.2. all claims or liabilities arising out of any breach by You, Us or any third party of the Transfer Regulations in respect of any Transferring Employee.

6. ACCESS SCREENING

- 6.1. Definitions: In this section 6 (Access Screening), the following additional definitions apply in addition to the SaaS terms at 1 above:

Activity or Activities	means the processes provided by the Screening SaaS including employment references, personal references, academic references, checking identities, validating and checking passports and driving licences, and criminal record checks.
Authorised User	means Your employee or a person You have authorised to access the Screening SaaS and who is trained on Your obligations under the agreed terms and conditions with respect to the use of the Screening SaaS.
Candidate	means a person who is the subject of an Activity.
Candidate Portal	means a public portal for Candidates to submit data and documents.
Consent	means the Candidate electronically or in a written form agreeing to the completion of all checks to be performed.

Customer Data	means any of the data and/or databases owned by You and provided to Us in connection with this Agreement.
Disclosure	means the online or paper certificate issued by Disclosure Scotland or Disclosure Barring Service which details an individual's criminal conviction or, where appropriate, non-conviction information or warrants that no such information is attributed to an individual.
Disclosure Result	means the result(s) of one or more of the checks carried out by Disclosure Barring Service or Disclosure Scotland or other third party criminal record check.
DPA	means the Data Protection Act 1998 (whilst in force) and any other applicable data protection or privacy legislation or regulations in any other country jurisdiction where the Services are provided now or in the future.
DBS	means Disclosure Barring Service.
DS	means Disclosure Scotland.
Footprint	means the record of any checks and searches undertaken in respect of a Candidate, including identification checks, credit checks, credit references and debt collection matters.
Operator Portal	means a web portal within the Software used by the Your Authorised Users to access the Screening SaaS.
Our Materials	means any items provided to You by Us in connection with this Agreement and includes Screening Output.
Partners	means organisations that supply, host or process data to or for Us in connection with the provision of the Services. We may at Our discretion use alternative Partners.
Responsible Body	means an organisation approved and registered with DBS or DS and/or any other third party carrying out criminal record checks as being authorised to apply for disclosures on behalf of staff, volunteers or associates, or where the Responsible Body is also a Responsible 'umbrella body', also authorised to apply for disclosures on behalf of third party customer organisations in respect of their staff, volunteers, or associates, or the checks of DS, DBS or other third parties, as applicable.
Screening Charges	means the fees (as applicable) set out the statement of work for the Screening SaaS.
Screening Output	means any electronic or other data, information, scores, records or material derived, prepared or generated by Us and iOur Partners as part of the Screening SaaS.
Screening SaaS	means the Screening SaaS described in the Screening Charges table in this Statement of Work and selected by You from time to time. The Screening SaaS will be delivered via the Operator Portal.
Territory	means the United Kingdom or such other territory as is specified in to this Statement of Work

- 6.2. The Screening SaaS utilises services and databases licensed to Us by our Partners. It is a condition of such licences that You agree to certain terms in this Agreement that are imposed by the Partners. Notwithstanding any other term of this Agreement, You agree that We shall be entitled by notice in writing to You to amend the Agreement to take account of any such term that a Partner requires to be included in the Agreement.
- 6.3. In the event that any Partner is unable to continue to provide a Screening SaaS or database to Us, We will use reasonable endeavours to source an equivalent or similar service or database. You agree that We will have no responsibility and liability for the discontinuation of any Partner service or database.
- 6.4. We grant to You a non-exclusive licence to use any Screening Output provided to You as part of the Screening SaaS in the Territory in accordance with this Agreement.
- 6.5. You agree that You will use the Screening Output and Our Materials in accordance with this Agreement.
- 6.6. Except as provided within this Agreement, You will:
 - 6.7. not sell, transfer, sub-license, distribute, commercially exploit or otherwise make available to, or use for the benefit of, any third party any of the Screening Output and/or Our Materials;
 - 6.8. not (and will not allow any third party to) adapt, alter, modify, reverse engineer, de-compile or otherwise interfere with the Screening Data and/or Our Materials without Our prior written consent or as otherwise permitted by law;
 - 6.9. only take such copies of the Screening Output and/or Our Materials as are reasonably required for the use of the Screening SaaS.
- 6.10. As We and our Partners are collating data from third party sources, We do not give any warranty or make any representation as to the accuracy, reliability or fitness for purpose of the Screening Output. We and our Partners are not able to verify accuracy of the data transferred to it by third parties. We shall not be liable for any inaccuracies, faults or omissions in the Screening Output except to the extent caused by Our negligence or wilful default.
- 6.11. The obligations of Us, DS and DBS when providing the Disclosure element of the Screening SaaS shall be to act in accordance with Criminal Record Checks (below).
- 6.12. If You receive a request under the Freedom of Information Act 2000 (the Act) which relates to any of the Confidential Information and You are a government body to which the Act applies, You shall consult Us and consider Our responses concerning the said request. In reaching a decision on disclosure You shall take into account its obligations under this Agreement and the representations made in connection with the request Us but Your decision, acting always in accordance with the Act, is recognised by Us to be final.
- 6.13. Each of the Partners may enforce pursuant to the Contracts (Rights of Third Parties) Act 1999 any of the term of this Agreement that is specifically stated to be for the benefit of the Partners. Other than the Partners, we each confirm our intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the application of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

PROCESSING NOTICES AND LAWFUL BASIS FOR PROCESSING

- 6.14. You may only use the Screening SaaS and the Screening Output for legitimate purposes. You warrant that before using the Screening SaaS you will either obtain consent for searches or that You have a legal basis under GDPR for conducting the searches. Where You warrant You have a legal basis You will indemnify Us for any loss We suffer as a result of a breach of this warranty.
- 6.15. Taking into account the nature of processing of personal data to be carried out in relation to the Activities performed under these Terms and Conditions, You shall comply with all applicable laws and regulations including the Data Protection Legislation in relation to providing individuals (including Candidates) with information (including issuing appropriate fair processing notices) explaining unconcise, transparent, intelligible, easily accessible, clear and plain language, amongst other things your purposes for processing their personal data, your retention periods for that personal data, and who it will be shared with. You will ensure that such information includes information which describes the lawful basis for processing as a controller, and for instructing Us to process personal data (including Candidate personal data) on Your behalf. You warrant that the type and scope of Activities carried out is appropriate in the circumstances. Where You warrant You have a legal basis You will indemnify Us for any loss We suffer as a result of a breach of this warranty.

SEARCH OBLIGATIONS

- 6.16. If the use of any of the Screening SaaS relates to an individual's application or agreement or vetting, You shall comply with the notification requirements of the DPA (whilst in force), and the Data Protection Legislation (once applicable) and notify the individual in writing that (i) the information which they give to You may be disclosed to a credit reference or fraud prevention agency which may keep a record of that information (Footprint); and (ii) the agency may disclose that information, and the fact that a search was made, to its other customers for the purposes of assessing the risk of giving credit, to prevent fraud and to trace debtors.

ADDITIONAL SECURITY REQUIREMENTS

- 6.17. Due to the nature of Our and Our Partner's businesses, particularly with regard to providing criminal record checks and county court judgements or other vetting data, We and Our Partners require) to follow the similar high standards in relation to security around Screening SaaS.
- 6.18. We require that You follow these additional security requirements at all times in relation to the Screening SaaS
- 6.19. These Security Requirements apply to any means through which You order or access the Software including, without limitation, system-to-system, direct access terminal, personal computer or the Internet.
- 6.20. These obligations are in addition to any requirements imposed by any Applicable Law which may apply to the Your use of the Screening SaaS (which may or may not include Personal Data).
- 6.21. You will:
- 6.21.1. ensure that only Authorised Users can have access to the Software and Screening SaaS;
 - 6.21.2. ensure that Authorised Users do not initiate Activities for personal reasons or provide them to any third party unless expressly permitted by any agreement between the parties;
 - 6.21.3. ensure that all devices used by You to access the Operator Portal are placed in a secure location and accessible only by Authorised Users, and that such devices are secured when not in use through such means as screen locks, shutting power controls off, or other reasonable security procedures;
 - 6.21.4. take all necessary measures to prevent unauthorised access to the Operator Portal by any person other than an Authorised User for permissible purposes, including, without limitation, limiting the knowledge of Your security codes, any telephone access number(s) We provide and any passwords You may use, to those individuals with a need to know.
 - 6.21.5. in no event access the Operator Portal via any unsecured or unauthorised device. Secured wireless connections shall adhere at a minimum to Our encryption standards outlined below in paragraph 5.7;
 - 6.21.6. not use personal computer hard drives or portable and/or removable data storage equipment or media (including but not limited to laptops, zip drives, tapes, disks, CDs, DVDs, software, and code) to store the Screening Output. In addition, data must be encrypted when not in use and all printed Screening Output must be stored in a secure, locked container when not in use, and must be completely destroyed when no longer needed by cross-cut shredding machines (or other equally effective destruction method) such that the results are not readable or useable for any purpose;
 - 6.21.7. if You send, transfer or ship any Screening Output, encrypt the data using the following minimum standards, which standards may be modified from time to time by Us: Advanced Encryption Standard (AES), minimum 128-bit key or Triple Data Encryption Standard (3DES), minimum 168-bit key, encrypted algorithms;
 - 6.21.8. monitor compliance with the obligations of these Security Requirements, and immediately notify Us if You suspect or know of any unauthorised access or attempt to access the Screening SaaS. Such monitoring will include, without limitation, a review of each of Our invoices for the purpose of detecting any unauthorised activity;
 - 6.21.9. not ship hardware or software between Your locations or to third parties without purging all sensitive information
 - 6.21.10. if You use a third party vendor to establish access to the Screening SaaS, be responsible for the third party vendor's use of the Your member numbers, security access codes, or passwords, and You will ensure the third party vendor safeguards Your security access code(s) and passwords through the use of security requirements that are no less stringent than those applicable to You under these Security Requirements; and
 - 6.21.11. use best endeavours to assure security when disposing of any personnel vetting information or record obtained from Us in accordance with Data Protection Legislation.
- 6.22. We may suspend the Screening SaaS and the supply of Screening Output if, acting reasonably, We believe You have suffered, are suffering or may suffer a breach or attempt to breach its security.
- 6.23. During any period of suspension:

- 6.23.1. We will have no liability to You;
- 6.23.2. You will cooperate with Us to address the cause of any concerns; and
- 6.23.3. neither party will issue any public statement regarding the Screening SaaS or the Screening Output and identifying the other party, unless required to do so by Applicable Law.
- 6.23.4. We will reinstate any suspended services as soon as it is satisfied as to the security of the Screening SaaS and the Screening Output.

CRIMINAL RECORD CHECKS – Disclosure Scotland and Disclosure Barring Service

- 6.24. The parties agree to:
 - 6.24.1. facilitate the use of the Online Screening Form that is used to carry out the DS, DBS and/or third party checks; and
 - 6.24.2. make available to the You the Disclosure Result electronically on receipt within the Screening SaaS. Original Disclosures can be provided by post where applicable and issued via Disclosure Scotland, at Your cost
- 6.25. We shall not be responsible for clarifying or investigating actual or claimed discrepancies or anomalies identified during the process of, or contained in the results of, the Disclosure Results either with the Candidate or with any third party.
- 6.26. We warrant and undertakes that, where DS or DBS checks are provided, at all times during the term of this Agreement that it will ensure these are performed by a Responsible Body and will at all times comply with the relevant Code of Practice for Responsible Bodies.
- 6.27. You warrant and undertake that at all times during the term of this Agreement You will ensure that: You will store, handle, retain and dispose of the Disclosure Result strictly in accordance with the DS Code of Practice for Responsible Persons and Other Recipients of Disclosure Information, and the DBS Code of Practice for Registered Persons and Other Recipients of Disclosure Information, and/or with the requirements of any relevant documents issued by third parties.
- 6.28. You shall be solely responsible for and liable to obtain or facilitate the receipt of Consent from any Candidate. Where Consent is provided through the Screening SaaS, We shall be deemed to have the right to consider Consent to have been granted. Copies of Consent in respect of any other Candidates shall be made available to Us on request, either from time to time or generally.