



illion

Digital Tech Solutions

# Terms & Conditions

Version 1.0. June 2020



## 1 INTERPRETATION

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

**Actual Go Live Date:** the actual date on which the Hosted Services commence following the successful completion of UAT testing.

**Agreement:** these Hosted Service Terms and Conditions ("Terms"), the Schedules, the front sheet attached to these Terms and any document executed in accordance with these Terms or incorporated by reference in these Terms.

**Business Day:** any day which is not a Saturday, Sunday or public holiday in the UK.

**Change of Control:** the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.

**Charges:** the on-going monthly charges for the provision of the Hosted Services (and any other relevant service).

**Client:** the person or company specified.

**Client Account Team:** the individuals appointed by the Client from time to time who shall serve as ILLION DTS's primary contacts for ILLION DTS's activities under this Agreement. The initial members of the illion DTS Account Team are listed in Schedule 1.

**Client Data:** the data related to the profile which the client uploads to or transmits via the Hosted Services (including without limitation the wording of any message to be conveyed by way of recording, SMS or any other form to Clients) by the Client or by illion DTS on the Client's behalf.

**Client's Project Manager:** the member of the Client Account Team appointed in accordance with clause 6.1.4. The Client's Project Manager at the Actual Go Live Date is named in Schedule 1.

**Commencement Date:** means the date this Agreement is signed by both parties.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified or ought reasonably to be identifiable as confidential as Confidential Information in clause 10.5.

**Deliverable:** a defined level of functionality or other pre-set milestone (if any) to be more particularly described in the Project Plan.

**Development Work:** Any additional development work contemplated by the Client to be dealt with in accordance with the change of control procedure as set out at clause 8.

**Fees:** the fees payable to ILLION DTS.

**Hosted Platform:** ILLION DTS's proprietary software framework and hardware architecture.

**Hosted Services:** the services that illion DTS provides to allow the Client to access and use the Hosted Platform, including hosting set-up and on-going services and/or IVM Services, as described on the front sheet to this Agreement.

**Intended Go Live Date:** the date the provision of the Hosted Services is to commence.

**IVM Services:** Interactive Voice Message services.

**Maintenance and Support:** any error corrections, updates and upgrades that illion DTS may provide or perform with respect to the Hosted Platform and Hosted Services, as well as any other support or training services provided to the Client under this Agreement, all as described in Schedule 4.

**Minimum Term:** means the period agreed.



**Normal Business Hours:** 7.30 am to 7.30 pm local UK time, each Business Day.

**Parties:** illion DTS and the Client.

**Profile:** a term used to describe a bespoke solution design utilising ILLION DTS's Hosted Services that accords with the Client's contract strategy in order to facilitate Customer contact, Customer interaction and reporting of outcomes as more particularly set out in the Profile Description, details of which are described in the Profile Description and Requirement Specification.

**Profile Description:** the functional requirements, including call flow, interactivity to meet the Requirement Specification as set out at Schedule 3 of this Agreement (including any decision tree and call flow diagrams).

**Project Plan:** the plan to be developed by the parties in the planning stage of the giving an indication of intended timescales.

**Requirements Specification:** the Client's written requirements in respect of the required output of the Profile which is the subject matter of this Agreement as set out in Schedule 3 of this Agreement.

**Service Availability:** the service availability set out in Schedule 5.

**Services:** the set-up services, Hosted Services including the IVM services and/or Maintenance and Support as applicable, given the context in which the term **Services** is used.

**Supplier's Project Manager:** ILLION DTS's Project Manager appointed in accordance with clause 2.1 and who at the Actual Go Live Date is named in Schedule 1.

**ILLION DTS:** illion DTS UK Limited (company number 04046943) whose registered office is at 1 Adam Street, London WC2N 6LE.

**UAT:** User Acceptance Testing of the Profiles by the Client and subject to Client approval prior to commencement of the Hosted Services.

**Virus:** anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes an individual, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors or permitted assigns].
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.



1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.8 A reference to **writing** or **written** includes faxes but not e-mail.

1.9 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

## 2 PLANNING AND TESTING

2.1 illion DTShall appoint a Project Manager, who shall have the authority to contractually bind illion DTSon all matters relating to this Agreement. illion DTShall use reasonable endeavours to ensure continuity of its Project Manager, but has the right to replace him from time to time for any reason whatsoever.

2.2 illion DTSand the Client shall agree (in writing) a Project Plan or intended timetable for performance of the Services and supply of any Deliverables. illion DTShall use reasonable commercial endeavours to meet the performance dates set out in the Project Plan or timing otherwise agreed in writing, but any such dates shall be estimates only, and time shall not be of the essence in this Agreement.

2.3 On delivery of each and any Deliverable, the Client shall review the Deliverable to confirm that it functions in material conformance with the applicable portion of the Profile Description and Requirements Specification. If the Deliverable fails in any material respect to conform with the applicable portion of the Profile Description and Requirements Specification, the Client shall give illion DTSa detailed description of any such non-conformance in writing, within five days of such delivery.

2.4 With respect to any errors contained in any Deliverables delivered to the Client, illion DTShall use reasonable endeavours to correct any such error within a reasonable time and, on completion, submit the corrected Deliverable to the Client.

2.5 If the Client does not provide any written comments within the five-day period described above, or if the Deliverable is found to conform with the Profile Description and Requirements Specification, the Deliverable shall be deemed accepted. For the avoidance of doubt, any error arising due to any incorrect, incomplete or inaccurate Profile Description or Requirement Specification and any changes otherwise required by the Client shall be dealt with in accordance with the change control process set out at clause 8.

## 3 HOSTED SERVICES, MAINTENANCE AND SUPPORT

3.1 From the Actual Go Live Date, illion DTShall perform the Hosted Services and Maintenance and Support services for the Client in accordance with this Agreement and the Profile Specification and Requirement Specification in particular. The Service Availability shall apply with effect from the Actual Go Live Date.

3.2 In relation to the Hosted Platform:



- 3.2.1 illion DTS hereby grants to the Client on and subject to the terms and conditions of this Agreement a non-exclusive, non-transferable licence to access the Hosted Platform through the Hosted Services and to use the Hosted Platform solely for the Client's business purposes.
- 3.2.2 the Client shall not store, distribute or transmit any Viruses, or any material through the Hosted Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- 3.2.3 the rights provided under this clause 3.2 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client;
- 3.2.4 the Client shall not:
  - 3.2.4.1 attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Hosted Platform except to the extent expressly set out in this Agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - 3.2.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Hosted Platform, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - 3.2.4.3 access all or any part of the Hosted Platform or Hosted Services in order to build a product or service which competes with the Hosted Platform and/or the Services; or
  - 3.2.4.4 use the Hosted Platform or Hosted Services to provide services to third parties; or
  - 3.2.4.5 subject to clause 18.1, transfer, temporarily or permanently, any of its rights under this Agreement, or
  - 3.2.4.6 attempt to obtain, or assist third parties in obtaining, access to the Hosted Platform, other than as provided under this clause 3.2.4; and
- 3.2.5 the Client shall use reasonable endeavours to prevent any authorised access to, or use of, the Hosted Platform and notify illion DTS promptly upon becoming aware of or suspecting any such unauthorised access or use.

#### 4 CLIENT DATA

- 4.1 The Client shall own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.
- 4.2 illion DTS shall follow its archiving procedures for Client Data as described in Schedule 2. In the event of any loss or damage to Client Data whatsoever, the Client's sole and exclusive remedy shall be for illion DTS
- 4.3 to use reasonable commercial endeavours to restore the lost or damaged Client Data from the I



- 4.4 A test back-up of such Client Data maintained by illion DTS in accordance with the archiving procedure described in Schedule 2. illion DTS shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party (except those third parties sub-contracted by illion DTS to perform services related to Client Data maintenance and back-up).
- 4.5 If illion DTS processes any personal data on the Client's behalf when performing its obligations under this Agreement, the parties record their intention that the Client shall be the data controller and illion DTS shall only be a data processor for the purposes of the Data Protection Act 1998 ("DPA") and in any such case:
- 4.5.1 the Client shall ensure that the Client is entitled to transfer the relevant personal data to illion DTS so that illion DTS may lawfully process the personal data in accordance with this Agreement (or otherwise in accordance with the Client's lawful instructions in writing on the Client's behalf);
  - 4.5.2 each party shall take all appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## 5 SUPPLIER'S OBLIGATIONS

- 5.1 illion DTS undertakes that the Services will be performed substantially in accordance with the Profile Description and/or Requirements Specification and with reasonable skill and care.
- 5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Hosted Platform contrary to ILLION DTS's instructions or modification or alteration of the Hosted Platform by any party other than illion DTS or ILLION DTS's duly authorised contractors or agents. If the Hosted Platform does not conform with the foregoing warranty, illion DTS will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, illion DTS does not warrant that the Client's use of the Hosted Platform and the Services will be uninterrupted or error-free.
- 5.3 This Agreement shall not prevent illion DTS from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this Agreement.

## 6 CLIENT'S OBLIGATIONS

The Client shall:

- 6.1.1 not for the effective duration of this Agreement, appoint any person other than illion DTS to provide all or any part of the Services;
- 6.1.2 provide illion DTS with:
  - 6.1.2.1 all necessary co-operation reasonably required by illion DTS in relation to this Agreement; and
  - 6.1.2.2 all necessary access to such information as may be required by ILLION DTS;



in order to render the Services, including but not limited to Client Data, security access information and software interfaces to the Client's other business applications.

- 6.1.3 provide such personnel assistance, including the Client Account Team and other Client personnel, as may be reasonably requested by illion DTS from time to time. The illion DTS Project Manager shall be as specified in Schedule 1. illion DTS shall use reasonable endeavours to ensure continuity of its personnel assigned to this Agreement;
- 6.1.4 appoint the Client's Project Manager, who shall have the authority to contractually bind the Client on all matters relating to this Agreement. The Client shall use reasonable endeavours to ensure continuity of the Client's Project Manager;
- 6.1.5 comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- 6.1.6 carry out all other Client responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, illion DTS may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.

## 7 CHARGES AND PAYMENT

- 7.1 The Client shall pay the initial Set-Up Fees in accordance with both the amounts and at the times specified on the front sheet to this Agreement.
- 7.2 The Client shall pay the on-going monthly Charges in respect of the Hosted Services which are inclusive of all routine maintenance and support in respect of the Hosted Platform and in addition shall pay any additional charges arising.
- 7.3 The Client shall reimburse illion DTS for all actual, reasonable travel expenses (if any) including, but not limited to, airfare, hotel and meals incurred by illion DTS in performance of the Services.
- 7.4 All amounts and Fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to ILLION DTS's invoice(s) at the appropriate rate.
- 7.5 illion DTS shall invoice the Client monthly on the last day of each calendar month for all Services performed by illion DTS during that month. Each invoice is due and payable 30 days after the invoice date. If illion DTS has not received payment within five days after the due date, and without prejudice to any other rights and remedies of ILLION DTS:
  - 7.5.1 illion DTS shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - 7.5.2 interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of HSBC Bank plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 7.6 illion DTS shall be entitled to review and increase its Fees and Charges provided that such charges cannot be increased more than once in any [12] month period. illion DTS shall give the Client written notice of such change [3] months before the date of the proposed date of increase. If such increase



is not acceptable to the Client, it may, within 2 weeks of the date of that notice, terminate the agreement by giving illion DTS[3] months written notice.

## **8 CHANGE CONTROL**

- 8.1 The Client's Project Manager and ILLION DTS's Account Manager shall meet at least once every 6 months to discuss matters relating to this Agreement. If either party wishes to change the scope of the Services (including Client requests for additional hosting services or IVM services), it shall submit details of the requested change to the other in writing.
- 8.2 For the avoidance of doubt, any change to a Profile or any aspect of the Services required following UAT due to either (i) any change in Client requirement (from the Requirement Specification or Profile Description); or (ii) any error or omission from the Requirement Specification or Profile Description shall be dealt with in accordance with the change control procedure set out at this clause 8.
- 8.3 If either party requests a change to the scope or execution of the Services, illion DTS shall, within a reasonable time, provide a written estimate to the Client of:
- 8.3.1 the likely time required to implement the change;
  - 8.3.2 any variations to the Fees and/or Charges arising from the change;
  - 8.3.3 the likely effect of the change on the Project Plan/the proposed timescales; and
  - 8.3.4 any other impact of the change on the terms of this Agreement.
- 8.4 If illion DTS requests a change to the scope of the Services, the Client shall not unreasonably withhold or delay consent to it.
- 8.5 If the Client wishes illion DTS to proceed with the change, illion DTS has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, the Project Plan/timescale and any other relevant terms of this Agreement to take account of the change.

## **9 PROPRIETARY RIGHTS**

- 9.1 The Client acknowledges and agrees that illion DTS and/or its licensors own all intellectual property rights in the Hosted Platform and the Services (including any Profile). Except as expressly stated herein, this Agreement does not grant the Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Hosted Platform, Services or any related documentation.
- 9.2 illion DTS confirms that it has all the rights in relation to the Hosted Platform that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.





## **10 CONFIDENTIALITY**

- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:
- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving party; or
  - 10.1.2 was in the other party's lawful possession before the disclosure; or
  - 10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5 The Client acknowledges that the Hosted Platform, the results of any performance tests of the Hosted Platform and the Services constitute ILLION DTS's Confidential Information.
- 10.6 illion DTS acknowledges that the Client Data is the Confidential Information of the Client.
- 10.7 This clause 10 shall survive termination of this Agreement, however arising.

## **11 INDEMNITY**

- 11.1 The Client shall on demand defend, fully indemnify and hold harmless and keep illion DTS fully indemnified against claims, actions, proceedings, losses, damages, claims, expenses and costs (including without limitation court costs and reasonable legal fees and expenses) arising out of or in connection with the Client's use of the Hosted Platform or Services (including any Profile), provided that:
- 11.1.1 the Client is given prompt notice of any such claim;
  - 11.1.2 illion DTS provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
  - 11.1.3 the Client is given sole authority to defend or settle the claim.



- 11.2 illion DTS shall defend the Client, its officers, directors and employees against any claim that the Hosted Platform infringes any United Kingdom patent effective as of the Actual Go Live Date, copyright, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
- 11.2.1 illion DTS is given prompt notice of any such claim;
  - 11.2.2 the Client provides reasonable co-operation to illion DTS in the defence and settlement of such claim, at ILLION DTS's expense; and
  - 11.2.3 illion DTS is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of the claim, illion DTS may obtain for the Client the right to continue using the Hosted Platform, replace or modify the Hosted Platform so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement without liability to the Client. illion DTS shall have no liability if the alleged infringement is based on:
- 11.3.1 a modification of the Hosted Platform by anyone other than ILLION DTS; or
  - 11.3.2 the Client's use of the Hosted Platform in a manner contrary to the instructions given to the Client by ILLION DTS; or
  - 11.3.3 the Client's use of the Hosted Platform after notice of the alleged or actual infringement from illion DTS or any appropriate authority.
- 11.4 The foregoing states the Client's sole and exclusive rights and remedies, and ILLION DTS's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.

## 12 LIMITATION OF LIABILITY

- 12.1 This clause 12 sets out the entire financial liability of illion DTS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 12.1.1 any breach of this Agreement;
  - 12.1.2 any use made by the Client of the Services, the Hosted Platform, the Deliverables or any part of them (including any Profile); and
  - 12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Except as expressly and specifically provided in this Agreement:
- 12.2.1 the Client assumes sole responsibility for results obtained from the use of the Hosted Platform and the Services by the Client, and for conclusions drawn from such use. illion DTS shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to illion DTS by the Client in connection with the Services, the Profile Description/Requirements Specification or any actions taken by illion DTS at the Client's direction; and
  - 12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 12.3 Nothing in this Agreement excludes the liability of ILLION DTS:



12.3.1 for death or personal injury caused by ILLION DTS's negligence; or

12.3.2 for fraud or fraudulent misrepresentation.

12.4 Subject to clause 12.3:

12.4.1 ILLION DTS shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this Agreement; and

12.4.2 ILLION DTS's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the price paid for the Services during the 12 months preceding the date on which the claim arose.

### 13 TERM AND TERMINATION

13.1 This Agreement shall commence on the Actual Go Live Date and shall continue for the Minimum Term, unless otherwise terminated as provided in this clause 13. Upon expiry of the Minimum Term, this Agreement shall automatically renew for yearly periods, unless either party notifies the other, in writing, at least 90 days before the end of the Minimum Term or the then current term that it wishes to terminate the Agreement.

13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

13.2.1 the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

13.2.2 an order is made, or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or

13.2.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

13.2.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

13.2.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or



- 13.2.6 the other party ceases, or threatens to cease, to trade; or
- 13.2.7 there is a change of control of the other party within the meaning of section 840 of the Income and Corporation Taxes Act 1988; or
- 13.2.8 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.3 On termination of this Agreement for any reason:

- 13.3.1 all licences granted under this Agreement shall immediately terminate;
- 13.3.2 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) including all and any Confidential Information belonging to the other party;
- 13.3.3 illion DTS may destroy or otherwise dispose of any of the Client Data in its possession unless illion DTS receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Client of the then most recent back-up of the Client Data. illion DTS shall use reasonable commercial endeavours to deliver the back-up to the Client within a reasonable time; and
- 13.3.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

**14 FORCE MAJEURE**

- 14.1 illion DTS shall have no liability to the Client under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of illion DTS or any other party), failure of a utility service or transport or telecommunications network, any power surge, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Client is notified of such an event and its expected duration.
- 14.2 In the event that an event of Force Majeure continues for a period of more than 3 months, either party may terminate this Agreement by giving not less than 30 days written notice to the other party. On and including the date of expiry of this notice, this Agreement will terminate (without prejudice to the rights of the parties in respect of any breach of this Agreement prior to such termination).

**15 WAIVER**

- 15.1 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 15.2 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.



## **16 SEVERANCE**

- 16.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **17 ENTIRE AGREEMENT**

- 17.1 This Agreement, and any documents expressly referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 17.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 17.3 Each party agrees that only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in this Agreement.

## **18 ASSIGNMENT**

- 18.1 The Client shall not, without the prior written consent of ILLION DTS, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 18.2 ILLION DTS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## **19 NO PARTNERSHIP OR AGENCY**

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

## **20 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each party has executed at least one counterpart.



## **21 THIRD PARTY RIGHTS**

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **22 NOTICES**

- 22.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.
- 22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

## **23 GOVERNING LAW AND JURISDICTION**

- 23.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of England.
- 23.2 The parties irrevocably agree that the courts of England 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).



## Schedule 1 PERSONNEL

### 1. SUPPLIER

Supplier's Project Manager: [NAME]

### 2. CLIENT

2.1 Client's Project Manager: [NAME]



## **Schedule 2 HOSTED SERVICES**

### **1. HOSTED SET-UP**

The set-up phase of the Hosted Services includes those services provided by illion DTS or its contracted third parties to design, install, configure and test the Hosted Services, as well as the hosting facility and internet connectivity.

### **2. INSTALLATION AND CONFIGURATION**

illion DTS shall procure, install and configure the hosting equipment to provide access to the Software. This includes the rack mounting of servers and related equipment, installation of system and database software components, configuration of clustering and cross-connects installation of the Software and loading of initial Client Data.

### **3. FACILITY**

The hosting equipment shall be installed in a rack-mounted configuration inside a professional hosting facility designed for such use. The facility shall be equipped with access security, climate control, fire suppression, and managed power supply with UPS and generator back-up.

### **4. INTERNET CONNECTIVITY**

4.1 illion DTS shall provide internet connectivity through an internet service provider at the hosting facility. The connectivity shall include multiple, diversely routed high-speed connections, a firewall for security and a load balancer for traffic management and speed optimisation. The Client shall, and shall ensure that its Authorised Users shall, make their own arrangements for internet access in order to access the Software.

4.2 illion DTS shall supply burstable bandwidth connectivity services. The connectivity shall include multiple connections and a network operation centre that monitors servers, the network platform and internet access.

### **5. CONTINUING HOSTED SERVICES**

The continuing Hosted Services provided by illion DTS or its contracted third parties, which allow for availability of the Software, include internet connectivity (as detailed in paragraph 4 above), load distribution management, security services, monitoring, back-up, release management and change control, and administration services.

### **6. SECURITY**

Data access security shall be provided through managed firewall services with security on all web pages, a private network path for administration and SNMP monitoring, and fully hardened servers.

### **7. MONITORING SERVICES**

illion DTS shall provide, 24 hours a day and seven days a week, monitoring of the computing, operating and networking infrastructure to detect and correct abnormalities. This includes





environmental monitoring, network monitoring, load-balancing monitoring, web server and database monitoring, firewall monitoring, and intrusion detection.

#### **8. BACK-UP, ARCHIVING AND RECOVERY SERVICES**

illion DTS shall develop the back-up schedule, perform scheduled back-ups, provide routine and emergency data recovery, and manage the archiving process. [The back-up schedule shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, illion DTS shall provide recovery services to try to restore the most recent back-up.

#### **9. RELEASE MANAGEMENT AND CHANGE CONTROL**

illion DTS shall provide release management and change control services to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that new releases, patch releases and other new versions are implemented as deemed necessary by illion DTS to maintain the Hosted Services.

#### **10. ADMINISTRATION SERVICES**

These services include the installation and administration of additional hardware, operating system and other software, and other resources as necessary to maintain the Hosted Services.

#### **11. IVM SERVICES**

illion DTS shall provide IVM services as set out in the Profile Description and Requirements Specification.



## **Schedule 3** **PROFILE DESCRIPTION/REQUIREMENTS SPECIFICATION**

*Insert details below of the following [including any decision tree/call flow diagram as appropriate]:*

**Profile Description**

**Requirements Specification**

**Software Specification**



## Schedule 4 MAINTENANCE AND SUPPORT

### 1. TRAINING

Illion DTS shall provide training to such Client employees/agents and sub-contractors as agreed on the front sheet of this Agreement.

### 2. MAINTENANCE EVENTS

2.1 Maintenance of the hosting equipment, facility, Software or other aspects of the Hosted Services that may require interruption of the Hosted Services (**Maintenance Events**) shall not be performed during Normal Business Hours. Illion DTS may interrupt the Services to perform emergency maintenance during the daily window of 10.00 pm to 2.00 am UK time. In addition, Illion DTS may interrupt the Hosted Services outside Normal Business Hours for unscheduled maintenance, provided that it has given the Client at least three days' advance notice. Any Maintenance Events which occur during Normal Business Hours, and which were not requested by the Client, shall be considered downtime for the purpose of service availability measurement. Illion DTS shall at all times endeavour to keep any service interruptions to a minimum.

2.2 Illion DTS may determine, at its sole discretion, that providing appropriate service levels requires additional equipment and/or bandwidth and may install that equipment and/or bandwidth without approval from the Client.

### 3. MAINTENANCE

3.1 Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Profile Description and Requirements Specification. Support for additional features developed by ILLION DTS, as requested by the Client, may be purchased separately at ILLION DTS's then current rates.

3.2 Illion DTS shall maintain and update the Software. Should the Client determine that the Software includes a defect, the Client may at any time file error reports. During maintenance periods, Illion DTS may, at its discretion, upgrade versions, install error corrections and apply patches to the hosted systems. Illion DTS shall use all reasonable endeavours to avoid unscheduled downtime for Software maintenance.

3.3 Illion DTS shall maintain technical support on the two most current releases of the Software.

### 4. TECHNICAL SUPPORT SERVICES

4.1 Illion DTS shall provide the Client with technical support services. The Client personnel named as Client support representatives in paragraph 2 of Schedule 1 (**CSRs**) shall be authorised to contact Illion DTS for technical support services. Illion DTS shall provide technical support services only to that specified set of CSRs.

4.2 Illion DTS shall accept emails [and calls] for support during Normal Business Hours within Business Days. Illion DTS shall use reasonable endeavours to process support requests, determine the source of the problem and respond to the Client.



- 4.3 illion DTS shall provide monitoring of its Hosted Services as described in paragraph 7 of Schedule 2 24 hours a day seven days a week. illion DTS shall directly notify the CSRs of Maintenance Events (as defined in paragraph 2.1 of Schedule 4) that may affect the availability of the Hosted Services.
- 4.4 The Client shall provide front-line support to the Client. However, the Client's designated CSRs may contact Supplier technical support in order to report problems that the Client's designated CSRs cannot resolve themselves after they have performed a reasonable level of diagnosis.
- 4.5 The Client shall also provide support for data integration tools and processes developed or maintained by the Client in order to connect the Software to the Client's other software and databases.
- 4.6 Before illion DTS or the Client makes changes to integration interfaces between the Software and the Client's internal data stores or systems, illion DTS or the Client shall provide notice to the other in order to ensure the continued operation of any integration interfaces affected by such changes. illion DTS shall provide the CSRs, or the Client shall provide the SSEs, with at least 60 days' advance notice of such changes. Such notice shall include at least the new interface specifications and a technical contact to answer questions on these changes. illion DTS or the Client (as applicable) shall also provide up to 15 days of integration testing availability to ensure smooth transition from the previous interfaces to the new interfaces and the Client shall pay for all such services relating to integration testing carried out by illion DTS at illion DTS's then current daily fee rates.



## Schedule 5 SERVICE LEVEL AVAILABILITY

### 1. SERVICE AVAILABILITY

illion DTS shall provide at least a [99.5%] uptime service availability level (**Uptime Service Level**). This availability refers to an access point on illion DTS hosting provider's backbone network. It does not apply to the portion of the circuit that does not transit the hosting provider's backbone network, as the Client is responsible for its own internet access. Availability does not include Maintenance Events as described in paragraph 2.1 of Schedule 44, Client-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by illion DTS to perform the Services), or outages or disruptions attributable in whole or in part to force majeure events within the meaning of clause 14.