



1 Definitions

1.1 In these terms of business:

Affiliate	means with respect to an entity, any entity that controls, is controlled by, or is under common control with that entity, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of an entity whether through the ownership of voting securities, contract or otherwise.
Business Day	means a day other than a Saturday, Sunday or public holiday in the UK when banks in London are open for business.
Change Request	means a formally documented change to the Services and/or Deliverables set out in the Contract that becomes binding on both parties once signed by both parties.
Client	means the addressee of the Order Acceptance, being the entity that is purchasing the Deliverables and Services from Incremental.
Client Materials	Means any data, information, text, graphics, templates and any other content in any and all media provided by the Client to Incremental for use in connection with the Services and/or incorporation into any Modifications or Deliverables.
Confidential Information	means any business or technical information of Incremental or the Client in any form (including any copies and any document which contains, reflects or is derived from Confidential Information) that (i) is designated by the respective party as “confidential” or “proprietary” at the time of disclosure or (ii) due to its nature or the circumstances of its disclosure, the party receiving such information knows or has reason to know that such information should be treated as confidential or proprietary.
Contract	means the contract between Incremental and the Client for the supply of the Services and Deliverables which comprises the Proposal, the Order, the Order Acceptance and these Terms.
Data Protection Laws	means any laws in force in the United Kingdom from time to time that relate to data protection, the processing of personal data and privacy, including: (a) the Data Protection Act 2018; (b) the General Data Protection Regulation (EU) 2016/679; and (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and references to “Data Subjects”, “Personal Data”, “Process”, “Processed”, “Processing”, “Processor” and “Supervisory Authority” have the meanings set out in, and will be interpreted in accordance with, such laws.
Data Security Incident	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed.
Deliverables	means the Software and Modifications provided to the Client under the terms of the Contract.
Incremental	means Incremental Group Limited (registered in Scotland with number SC127126) and all related holding companies and subsidiaries.
Incremental Software	means the standard software components or modules that are owned by Incremental and licensed to the Client under a separate perpetual or subscription basis licence agreement.
Intellectual Property Rights	means any and all intellectual property and/or proprietary rights of any kind, tangible or intangible, now known or hereafter existing, including copyrights, trade secret rights, know how, database rights, trademarks and patent rights, including all registrations and applications in force whether now or in the future in any jurisdiction throughout the world and any other similar rights.
International Transfer	means a transfer to a country outside the European Economic Area (as it is made up from time to time) of Personal Data which is undergoing Processing, or which is intended to be Processed after transfer.
Microsoft	means Microsoft Corporation and/or any of its subsidiaries from time to time.
Modifications	means modifications, additions or customisations to Software that are developed or produced by Incremental and provided to the Client hereunder.
Order	means the Client’s order for the supply of the Deliverables and the Services, as set out in the Proposal.



Order Acceptance	means Incremental's written confirmation that the Order from the Client has been accepted, at which point and on which date the Contract shall become effective.
Proposal	means the proposal contained in the Contract containing the specification for the Services and the Deliverables provided in writing by Incremental to the Client.
Services	means the supply of professional services related to the Software or Modifications, including configuration, upgrades, support, implementation, programming and application design and development, systems analysis and design, third party program installation, conversion and implementation planning and installation evaluation.
Software	means the Incremental Software and Third Party Software.
Sub-Processor	means any third party appointed by Incremental to Process Personal Data
Terms	means these terms and conditions of business, as amended or as otherwise varied from time to time.
Third Party Software	means any software supplied by Incremental on either a perpetual or subscription basis and in which the Intellectual Property Rights in such software is proprietary to Microsoft or another third party.

2 Basis of Contract

- 2.1 The Order constitutes an offer by the Client to purchase the Deliverables and the Services (as fully detailed in the Proposal) in accordance with these Terms.
- 2.2 The Order shall only be deemed to be accepted when Incremental issues a written Order Acceptance, or in the case of public sector frameworks when a customer accepts a bid through such a framework, at which point and on which date the Contract shall become effective. Order Acceptance is subject to successful completion of new client take-on procedures, which may include but will not be limited to, a suitable credit check score in respect of the Client. In the event of any inconsistency between the Order Acceptance and these Terms, these Terms will prevail unless the Order Acceptance expressly states that it is intended to amend these Terms or the Order is subject to standard public sector framework terms and conditions.
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Incremental which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Incremental and any descriptions of the Deliverables or of the Services contained in Incremental's marketing literature or website are issued or published for illustrative purposes only. They shall not form part of the Contract or have any contractual force.
- 2.5 These Terms apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Where the Contract includes the provision of Third Party Software, the Client acknowledges that it shall also be bound by the provisions of the relevant Third Party Software licence.
- 2.7 Incremental may refrain from providing the Deliverables and/or carrying out the Services if, in its opinion, they might involve Incremental in a breach of any legal, professional or regulatory requirements or if Incremental considers that it has not been provided with all relevant information or sufficient funds.
- 2.8 Any quotation given by Incremental as part of a Proposal shall not constitute an offer and is only valid for a period of 30 days from its date of issue.

3 Client Responsibilities

- 3.1 The Client will, so far as reasonably practicable:
- 3.1.1 provide Incremental with timely instructions, responses to information requests and all materials necessary or desirable for Incremental to provide the Services and/or Deliverables to the Client;
- 3.1.2 ensure that all information and documentation provided to Incremental is complete in all material respects and not misleading;
- 3.1.3 make at least one identified Client contact available during regular business hours who is authorised to approve a Change Request and provide other information and assistance to Incremental;
- 3.1.4 make available to Incremental other Client personnel familiar with the Client's requirements and with the expertise to permit Incremental to undertake and complete its obligations under the Contract;
- 3.1.5 notify Incremental promptly of any changes or additions to instructions, information, materials and contact details previously provided by the Client or on the Client's behalf;
- 3.1.6 remain in contact with Incremental, particularly if critical dates are to be met and be available to approve documentation as required;
- 3.1.7 maintain a proper operating environment for the Software, where appropriate;
- 3.1.8 provide for all power, environmental requirements, supplies, cabling, communications facilities, and all other equipment and facilities required;



- 3.1.9 regularly back up all files and data, where appropriate;
- 3.1.10 provide access to the Client's systems as reasonably requested by Incremental; and
- 3.1.11 obtain and maintain all necessary licences, consents and permissions necessary for Incremental to perform its obligations under the Contract.

4 Services and Deliverables

- 4.1 Incremental shall provide the Services and the Deliverables to the Client in accordance with the Contract in all material respects.
- 4.2 Incremental shall have the right to make any changes to the Services and the Deliverables which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services and/or the Deliverables, and Incremental shall notify the Client in any such event.
- 4.3 Unless otherwise agreed, Incremental will provide estimates of its fees, costs and delivery dates in the Contract. Incremental shall use all reasonable endeavours to meet any performance dates for the Services and the Deliverables specified in the Contract, but any such dates shall be estimates only. The Client understands that:
 - 4.3.1 Incremental is not bound by any such estimates and provides Services on a time and materials basis unless otherwise expressly set forth in the Contract;
 - 4.3.2 any such estimates are provided only as a good faith illustration based on information furnished to Incremental by the Client; and
 - 4.3.3 if any estimates set forth in the Contract become materially inaccurate, Incremental will notify the Client in writing as soon as reasonably possible after Incremental becomes aware of such change. In addition, at the Client's request, Incremental will update the estimates in the Contract.
- 4.4 If the Client desires to initiate changes to the Services and Deliverables set out in the Contract, it will submit a written request to Incremental, setting forth the requested changes and authorisation for Incremental to proceed with preparing and issuing a formal written Change Request. Within 5 Business Days of the Client's submission, Incremental will provide the Client with a formal written Change Request, setting forth, at a minimum, any changes or additions to the Contract in respect of:
 - 4.4.1 the delivery schedule;
 - 4.4.2 the Services and Deliverables; and
 - 4.4.3 the estimated fees.
- 4.5 The Client will accept or reject the Change Request within 5 days after receipt (such consent not to be unreasonably withheld or delayed). A Change Request will be binding only if signed by both parties and, upon execution, such Change Request will be deemed an amendment to the Contract.
- 4.6 The Client may permit the use and benefit of any Software and/or Deliverables to any of its Affiliates without entering into a separate Contract with Incremental provided that:
 - 4.6.1 Incremental will have no obligation to provide any Services or Deliverables directly to that Affiliate;
 - 4.6.2 the Client and its Affiliates are solely responsible for securing any licences necessary to use any Third Party Software;
 - 4.6.3 the Client remains fully responsible and liable to Incremental at all times for all acts and omissions of its Affiliates; and
 - 4.6.4 in the event that any such Affiliate is no longer an Affiliate of the Client, any rights which the Affiliate previously had to use and have the benefit of the Software and/or Deliverables shall immediately cease.

5 Communications

- 5.1 The Client authorises Incremental to act on instructions given in any manner if Incremental reasonably believes that the Client or a person with authority to act on the Client's behalf has given those instructions. Incremental may ask for written confirmation of oral instructions.
- 5.2 Not all methods (especially electronic methods) of communication are secure. The Client authorises Incremental to communicate electronically with the Client and all third parties on all matters related to the Contract and the Client agrees that Incremental will not be liable for any loss or damage arising from the use of any method of communication, including, without limitation, non-delivery of any emails.
- 5.3 Incremental monitors communications to and from its systems. Communications (including recorded voice messages) sent to or received from individuals within Incremental may be intercepted and recorded by Incremental.

6 Fees, Invoicing and Payments

- 6.1 Unless otherwise agreed in the Contract, all amounts payable hereunder will be invoiced weekly to the Client and all invoiced amounts are due and payable by the Client within 15 days of the invoice date unless otherwise agreed in the Contract.
- 6.2 Unless explicitly stated otherwise, all amounts to be invoiced are in GBP and are exclusive of VAT. VAT will be charged in addition to the fees and any relevant expenses at the applicable rate (unless the invoice relates to services treated as supplied outside the European Union or, provided the Client has given Incremental its VAT registration details, treated as supplied to an undertaking's establishment elsewhere in the European Union). Incremental's VAT Registration Number is GB671157241.
- 6.3 Any invoice that is unpaid when due will accrue interest and debt recovery costs on the terms defined in the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.4 If an invoice is not paid by the Client when due, Incremental, in addition to any other available remedies, may suspend performance under this Contract until all overdue invoices have been paid. If Incremental exercises its right to suspend under this clause 6.4, all times estimated in the Contract for performance or delivery may be extended by the number of days that any payment thereunder is late and any fee estimates may need to be revised to reflect any additional costs incurred by Incremental arising from the period



of suspension. Incremental is not liable for any loss or damage whatsoever incurred by the Client or any associated entity or third party as a result of any suspension in accordance with this clause 6.4.

- 6.5 The Client will review each invoice promptly upon receipt and will notify Incremental in writing within 10 Business Days of the invoice date of any dispute as to the amount or validity of that invoice. If the Client fails to timely deliver such notice, the Client will be deemed to have consented to the invoiced charges; provided that, for the avoidance of doubt, the Client's failure to timely deliver the notice will not constitute a waiver of any claims by the Client hereunder with respect to the Services covered by that invoice. Notwithstanding anything else herein, the Client will pay the undisputed portion of any disputed invoice in accordance with clause 6.1.
- 6.6 Where the Contract sets forth the agreed hourly rates between the parties for Incremental's Services, Incremental may increase such rates no more than once in any 12-month period to reflect prevailing market conditions in accordance with its normal business practices, unless otherwise agreed in the Contract. Any such increases will be binding upon the Client.
- 6.7 The Client will pay all reasonable travel, living and other expenses incurred by Incremental in performing the Services on the terms set forth in clause 6.1 above. Travel expenses will be billed at cost and travel time will be billed at 50% of Incremental's applicable hourly rates for its personnel.
- 6.8 Any advance deposits against fees for Services under the Contract hereto will be applied to the fees invoiced for those Services only.
- 6.9 Save as otherwise expressly provided for in this Contract or required by law, all payments to be made by the Client to Incremental under this Contract will be made in full and without any set-off or any deduction or withholding (of any kind) including without limitation on account of any counter claim.
- 6.10 The Client agrees that Incremental has the right at any time to withdraw any discount and/or to revise any price quoted if there is a change in the cost to Incremental of supplying the Services and/or Deliverables as a result of:
 - 6.10.1 any factor beyond the control of Incremental (including, but not limited to, exchange rate fluctuations, increases in taxes or duties and third party charges);
 - 6.10.2 any request by the Client to change the delivery date(s), the Services or the Deliverables to be supplied, or any other term within the Contract; or
 - 6.10.3 Incremental (acting reasonably) identifying that the scope of the Services to be supplied has been misrepresented by the Client or the Client's needs have changed throughout the duration of the Contract;
 - 6.10.4 any delay of instructions from the Client in respect of the Services and/or Deliverables or failure of the Client to give Incremental adequate or accurate information or instructions in respect of the Services and/or Deliverables.
- 6.11 If the Contract price is increased in accordance with clause 6.10, Incremental will inform the Client as soon as possible and give the Client the option of reconfirming the Contract at the new price or cancelling the Contract.
- 6.12 Incremental endeavours to ensure that all prices on its website, in its marketing materials and its price lists are accurate, but errors may occur. If Incremental discovers an error in the price of the Services and/or Deliverables in the Contract, it will inform the Client as soon as possible and give the Client the option of reconfirming the Contract at the correct price or cancelling the Contract.

7 Confidentiality

- 7.1 Confidential Information does not include information that the receiving party can document:
 - 7.1.1 was generally available to the public at the time received from the disclosing party or becomes generally available to the public thereafter without breach of this clause 7;
 - 7.1.2 was known to it, without restriction, at the time of disclosure;
 - 7.1.3 is disclosed to the receiving party by a third party who may transfer or disclose such information without restriction; or
 - 7.1.4 was independently developed by it without any use of the disclosing party's Confidential Information.
- 7.2 Each party acknowledges that it may receive or have access to the other party's Confidential Information during the term of the Contract. Each party will maintain the confidentiality of the other party's Confidential Information, will not use such Confidential Information other than to perform its obligations hereunder and will not disclose such Confidential Information to any third party, except for its employees, consultants or advisors who require access to the Confidential Information to perform their obligations to Incremental or the Client on the understanding that such information requires to be treated as confidential under the receiving party's obligations.
- 7.3 Further, the restrictions on disclosure of Confidential Information will not apply to the extent disclosure is required by a court, administrative agency or other governmental body with jurisdiction; provided that the receiving party uses diligent efforts to:
 - 7.3.1 provide prompt notice of the required disclosure to the disclosing party; and
 - 7.3.2 limit disclosure and obtain confidential treatment for such Confidential Information.
- 7.4 On termination of the Contract, the receiving party will promptly deliver to the disclosing party or destroy all notes, memoranda and all other media and materials containing the disclosing party's Confidential Information and will not retain any copies thereof other than solely for archival, disaster recovery and compliance purposes, which copies will remain wholly subject to this clause 7.
- 7.5 Incremental shall be under no duty to disclose to the Client (or take into account in the course of providing the Services) any information acquired by Incremental in acting for any other client or any information in respect of which Incremental owes a duty of confidentiality to another party.



8 Intellectual Property

- 8.1 Subject to this clause 8, Incremental will own all rights, including all Intellectual Property Rights, in and to all Incremental Software, Modifications and any data, reports or analyses, tangible or intangible, created or produced by Incremental in providing the Services and/or Deliverables, save that upon delivery by Incremental and payment in full of all relevant fees by the Client, the Client will own all rights, title and interest in and to any data, reports or analyses delivered under the Contract.
- 8.2 Provided that the Client is not in breach of this Contract and has paid all amounts related to the Modifications due to Incremental, Incremental hereby grants the Client a perpetual and irrevocable, non-transferable and non-assignable, non-exclusive, royalty-free and fully-paid licence to use, install and execute, reproduce, modify and create derivative works from the Modifications solely for the Client's internal business purposes or as otherwise separately agreed in writing. The Client may not distribute, sub-licence or disclose any such Modifications, other than to any third party that provides technical or other services to the Client and solely and exclusively to provide services for the Client's internal business purposes.
- 8.3 The Client's rights in the Incremental Software will be as provided in the applicable Incremental licence agreement. Any associated media, printed material and online or electronic documentation for the Incremental Software will be deemed Incremental Software hereunder. The Client acknowledges that the Incremental Software is licensed to the Client, not sold.
- 8.4 The Client's rights in any Third Party Software and any other data, programs and other materials provided by third parties, regardless of whether or not obtained with the assistance of Incremental, will be as provided in the applicable Third Party Software licence agreement and the Client is solely responsible for compliance with such third party agreements and policies. Incremental shall have no responsibility or liability to the Client in respect of the Third Party Software and the Client's sole remedy shall be to the Third Party Software provider under the relevant Third Party Software licence agreement.
- 8.5 For the avoidance of doubt, the Client retains all right, title and interest in and to any Client Materials. Incremental's ownership rights as set forth above are subject to the Client's underlying rights in and to the Client Materials. The Client hereby grants a fully paid up, perpetual, royalty free licence to Incremental to use the Client Materials for the purposes of providing the Services and/or Deliverables.
- 8.6 The provisions of this clause 8 shall continue upon expiration or termination of this Contract.

9 Data Protection and Information Security

- 9.1 Incremental may, during the provision of the Services, receive Personal Data relating to the Client, the Client's employees or third parties. Both parties agree to comply with their respective obligations under the Data Protection Laws in respect of Personal Data.
- 9.2 The parties agree that the Client is the Controller of Personal Data and Incremental is authorised by the Client to be the Processor of Personal Data.
- 9.3 The Client warrants to Incremental that:
- 9.3.1 it has all necessary rights to authorise Incremental to process Personal Data in accordance with this Contract and the Data Protection Laws; and
- 9.3.2 its instructions to Incremental relating to processing of Personal Data will not put incremental in breach of Data Protection Laws, including with regard to International Transfers.
- 9.4 If Incremental considers that any instructions from the Client relating to processing of Personal Data may put Incremental in breach of Data Protection Laws, Incremental will be entitled not to carry out that processing and will not be in breach of this Contract or otherwise liable to the Client as a result of its failure to carry out that processing.
- 9.5 Incremental will not engage any third party (other than Microsoft) for the processing of Personal Data without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed).
- 9.6 Where Microsoft appoints a Sub-Processor and provides notice of this to Incremental, Incremental shall notify the Client.
- 9.7 If Incremental appoints a Sub-Processor, Incremental will put a written contract in place between Incremental and the Sub-Processor that specifies the Sub-Processor's processing activities and imposes on the Sub-Processor substantially similar protective terms to those imposed on Incremental in this clause 9. Incremental will remain liable to the Client for performance of the Sub-Processor's obligations.
- 9.8 Incremental will:
- 9.8.1 process the Personal Data only on documented instructions from the Client (unless Incremental or the relevant Sub-Processor is required to process Personal Data to comply with applicable laws, in which case Incremental will notify the Client of such legal requirement prior to such processing, unless such applicable laws prohibit notice to the Client. For the purpose of this clause 9, the obligations on Incremental to provide the Services are documented instructions. Nothing in this clause 9 will permit the Client to vary Incremental's obligations under this Contract other than in accordance with clause 4.4;
- 9.8.2 without prejudice to clauses 9.3.2 and 9.4, immediately inform the Client if, in its reasonable opinion, any instruction received from the Client infringes any Data Protection Laws;
- 9.8.3 ensure that any individual authorised to process Personal Data is subject to confidentiality obligations or is under an appropriate statutory obligation of confidentiality and complies with clause 9.8.1; and
- 9.8.4 at the option of the Client, delete or return to the Client all Personal Data after the end of the provision of Services relating to processing, and delete any remaining copies. Incremental will be entitled to retain any Personal Data which it has to keep to comply with any applicable law or which it is required to retain for insurance, accounting, taxation or other record keeping purposes. This clause 9 will continue to apply to retained Personal Data.
- 9.9 Incremental will only make an International Transfer if:
- 9.9.1 a competent authority or body of the United Kingdom or the European Commission (as applicable) makes a binding decision that the country or territory to which the International Transfer is to be made ensures an adequate level of protection for processing of Personal Data;



- 9.9.2 Incremental or the relevant Sub-Processor provides adequate safeguards for that International Transfer in accordance with Data Protection Laws, in which case the Client will execute any documents (including data transfer agreements) relating to that International Transfer which Incremental or the relevant Sub-Processor requires it to execute from time to time; or
- 9.9.3 Incremental or the relevant Sub-Processor is required to make the International Transfer to comply with applicable laws, in which case Incremental will notify the Client of such legal requirement prior to such International Transfer unless such applicable laws prohibit notice to the Client on public interest grounds.
- 9.10 Incremental will:
 - 9.10.1 implement appropriate technical and organisational measures in respect of the Personal Data to protect against the unauthorised or unlawful processing, accidental loss of or destruction or damage to such Personal Data;
 - 9.10.2 notify the Client without undue delay after becoming aware of a Data Security Incident;
 - 9.10.3 provide reasonable assistance to the Client (at the Client's cost) in complying with its obligations under the Data Protection Laws relating to the security of processing Personal Data; responding to requests for exercising Data Subjects' rights under the Data Protection Laws; documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/or Data Subjects; and conducting privacy impact assessments of any processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.
- 9.11 Incremental will:
 - 9.11.1 make available to the Client all information necessary to demonstrate compliance with the obligations set out in this clause 9; and
 - 9.11.2 allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client, provided that the Client gives Incremental at least 30 days' prior written notice of each such audit and that each audit is carried out at the Client's cost, during business hours, so as to cause the minimum disruption to Incremental's business and without the Client or its auditor having any access to any data belonging to a person other than the Client or confidential information of a third party. Any materials disclosed during such audits and the results of and/or outputs from such audits will be deemed to be Confidential Information of Incremental and the provisions of clause 7 will apply to them.

10 Term and Termination

- 10.1 This Contract shall take effect from the date of issue by Incremental of an Order Acceptance and will continue until terminated in accordance with this clause 10.
- 10.2 The licence to any Software delivered under the Contract that is perpetual in nature will become effective upon payment in full of the licence fees as set forth in the Contract and will continue in accordance with the terms of the applicable licence agreement.
- 10.3 If the Client notifies Incremental that it requires to temporarily suspend the Services and Deliverables under the Contract for a period of more than five (5) Business Days, Incremental will invoice and the Client will remit to Incremental an amount equal to the sum of:
 - 10.3.1 Incremental's fees for the Services it expected to perform in the 15 Business Days immediately following the notification of such a suspension;
 - 10.3.2 reimbursement for any third-party charges incurred under the Contract and already paid or due and owing by Incremental; and
 - 10.3.3 the cost of any non-cancellable commitments or expenses already incurred by Incremental under the Contract.
- 10.4 The Contract may be terminated by either party, without cause, upon giving not less than 30 days' written notice to the other party at any time after completion of any agreed in writing minimum Contract period or, if no minimum Contract period is specified, at any time.
- 10.5 Without affecting any other right or remedy available to it, either party may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the other party if:
 - 10.5.1 the other party breaches any term or condition of this Contract and such breach is not cured within 14 days following written notice from the party specifying the breach;
 - 10.5.2 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - 10.5.3 the other party becomes unable to pay its debts as they fall due or becomes the subject of insolvency proceedings or calls any meeting of its creditors;
 - 10.5.4 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.6 Unless otherwise provided in the Contract, the Client may terminate the Contract up to five (5) Business Days prior to commencement of Incremental's Services thereunder provided that, on such a termination, the Client will remit to Incremental an amount equal to the sum of:
 - 10.6.1 Incremental's fees for the Services it expected to perform in the first ten (10) Business Days;
 - 10.6.2 reimbursement for any third-party charges incurred under the Contract and already paid or due and owing by Incremental; and
 - 10.6.3 the cost of any non-cancellable commitments or expenses already incurred by Incremental under the Contract.
- 10.7 If the Contract is terminated less than five (5) Business Days prior to the commencement of Incremental's Services, the Client will remit to Incremental an amount equal to 50% of Incremental's estimated fees for Services under the Contract together with the other amounts listed above at 10.6.2 and 10.6.3.
- 10.8 Notwithstanding anything to the contrary above, the Client will not be entitled to terminate the Contract with respect to third-party software already ordered by Incremental from any third party vendor(s) on the Client's behalf. In the event of any termination by the Client of the Contract under this clause 10, Incremental will use reasonable commercial efforts to reallocate its resources and terminate or modify any outstanding third-party commitments and will pass any such savings on to the Client.



- 10.9 Without affecting any other right or remedy available to it, Incremental may terminate the Contract with immediate effect by giving written notice to the Client if the Client is a customer of Microsoft and for any reason Microsoft terminates the Client's status as a customer of Microsoft.
- 10.10 Within 30 days after expiry or termination (for any reason) of this Contract, the Client will:
 - 10.10.1 pay for all Services performed and Deliverables provided by Incremental up until the effective termination date of the Contract; and
 - 10.10.2 reimburse Incremental for any non-cancellable commitments incurred by Incremental to date in connection with the Contract, as applicable.
- 10.11 Promptly following termination of the Contract, except as set forth herein or separately agreed, each party will return to the other party its Confidential Information and other property in the first party's possession or control.
- 10.12 Provided that the Client has paid all applicable licence fees related to any Software that is perpetual in nature, the licence(s) to such Software will survive termination of the Contract in accordance with the terms of the applicable licence agreements.
- 10.13 Where the Contract includes licences to Software that are on a subscription basis, the Client's right to use such Software shall cease immediately upon termination of the Contract.
- 10.14 Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.
- 10.15 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect.

11 Representations and Warranties

- 11.1 Incremental warrants and represents that it will provide the Services and Deliverables in a professional manner using reasonable skill and care and in accordance with generally accepted industry standards.
- 11.2 Incremental warrants and represents that the Incremental Software is proprietary to Incremental and that it has the right to license all IP Rights in and to the Incremental Software to the Client.
- 11.3 Subject to the terms herein, Incremental warrants to the Client that the Incremental Software and Modifications will perform substantially in accordance with the specifications contained in the Contract for a period of 30 days after delivery to the Client (the "Warranty Period"); provided that the Incremental Software and Modifications are used only on the equipment and in the environment for which they were respectively designated and configured and further provided that Incremental will have no responsibility for problems or errors resulting from Third Party Software or from incompatibility of the Incremental Software or Modifications with any Third Party Software where the use thereof is not specified in the Contract. This limited warranty is given to the Client only and may not be transferred to any other person. Except as specifically set forth in the Contract, Incremental does not warrant that the Software, Modifications and/ or Deliverables will meet the Client's requirements or perform continuously without error.
- 11.4 Incremental does not provide any warranty in relation to Third Party Software. All Third Party Software provided under this Contract is licensed directly to the Client by the manufacturer of such Third Party Software, and the Client will receive warranties, if any, for Third Party Software as provided by the licensors, manufacturers or vendors thereof. Incremental will not be liable for any errors or defects in any Third Party Software or for any non-performance thereof. Any claim based on, related to or arising out of the use of any Third Party Software will be governed exclusively by the terms of the Client's agreement with that third party.
- 11.5 The warranties set forth in this clause 11 are in lieu of and exclude (to the fullest extent permitted by law), any and all other representations, conditions and warranties with respect to the Services or Deliverables, whether expressed or implied by statute, common law or otherwise, oral or written, including any warranty or condition of merchantability, satisfactory quality, fitness for a particular purpose, compatibility with other software products or non-infringement.
- 11.6 The Client represents that it has and will maintain or will acquire sufficient quantities of fully valid licences (e.g. software licences, client access licences, subscription agreements for cloud-based software and/ or service plans) for all Third Party Software to fully support its requisite number of users thereof under the Client's agreement with Incremental and/ or the Third Party Software licensor.
- 11.7 Incremental's warranties and obligations under the Contract will be null and void if the Client or any third party uses, improperly installs and/or modifies the Services or Deliverables in any manner other than as authorised by Incremental.

12 Remedies and Limitation of Liability

- 12.1 Either party's breach of its obligations under clauses 7 or 8 or the Client's breach of any restriction on its use, copying or transfer of Software under this Contract would irreparably injure the other party, which could not adequately be compensated by monetary damages. Accordingly, each party may seek and obtain injunctive relief from the breach or threatened breach of such provisions in addition to and not in limitation of any other legal remedies.
- 12.2 Incremental's sole liability and the Client's sole and exclusive remedies under Incremental's limited warranty in clause 11.3 above are as follows: if notified by the Client in writing of a problem during the Warranty Period, Incremental will use all commercially reasonable efforts at no charge to repair or replace each item of Incremental Software and/or Modifications to make the item operate as warranted; provided that, if Incremental is unable to make the affected item operate as warranted within a reasonable time, Incremental, at its sole option, may instead refund to the Client the licence or other fees paid by the Client to Incremental for the non-conforming item to the extent paid by the Client.
- 12.3 Further to clause 11.4, the Client's sole remedy with respect to Third Party Software will be to the licensor, manufacturer or vendor of such software and as provided in the agreement between the Client and such third party. The Client acknowledges and agrees that it shall have no remedy against Incremental (and Incremental shall have no liability to the Client) in respect of the Third Party Software.



- 12.4 For the purposes of this Contract, a Force Majeure Event means an event beyond the reasonable control of Incremental including but not limited to strikes, industrial action, failure of a utility service or transport network, act of God, war, riot, malicious damage, act of terrorism, 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 subcontractors. Neither party will be liable for any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. The affected party will promptly inform the other party of any Force Majeure Event, and either party may require a renegotiation of the details set forth in the Contract. If a Force Majeure Event continues for more than 30 days, either party may terminate the Contract.
- 12.5 No action, regardless of form, relating to or arising out of the Services under this Contract may be brought by either party more than two years after the date of completion of the Services.
- 12.6 Neither party will be liable to the other party for any loss of profits (except in the case of the Client's liability, in respect of any profit element within any fees that would have become due to Incremental if the Contract had been properly performed in accordance with its terms by the Client), loss of revenue, loss of anticipated savings, loss of goodwill, loss of or corruption of or damage to any data (in each case whether those losses are direct or indirect) or for any indirect, consequential, special or punitive damages incurred or suffered by the other party in any circumstances.
- 12.7 Subject to the following sentence and clause 12.3, Incremental's total liability to the Client under this Contract, whether arising in contract, tort or otherwise, will be limited to the total monies paid or payable under the Contract. Nothing in this clause 12 or elsewhere in the Contract shall exclude or limit either party's liability for death or personal injury resulting from negligence, or in relation to any claim based on fraud, or in relation to any claim for breach or misuse of Intellectual Property Rights or Confidential Information, or a breach of the obligations imposed by s12 Sale of Goods Act 1979 or s2 Supply of Goods and Services Act 1982, or for any claim under a party's indemnification obligations under this Contract or in respect of any liability which cannot be limited or excluded by law.
- 12.8 Incremental shall not be liable under or in connection with this Contract, whether for any delay or failure to provide any Services and/or Deliverables or otherwise, caused by:
- 12.8.1 any act or omission of the Client which is contrary to its obligations under the Contract;
- 12.8.2 any failures of any third parties to provide Third Party Software; and/or
- 12.8.3 any disruption to the Client's system which occurs while any Software or Modifications are being installed.
- 12.9 The Client acknowledges that Incremental cannot select Software on its behalf and that Incremental shall have no liability in respect of the suitability of any selected by the Client. In the event that any such advice was provided to the Client by Incremental, the Client acknowledges that advice was not intended to be relied upon and was provided as is without any warranty of any kind from Incremental and shall have no liability in relation thereto.
- 12.10 Incremental shall not be liable for defects in Software resulting from abnormal conditions of use or any act, neglect or default of the Client or any third party.
- 12.11 Except as expressly and specifically provided in the Contract, the Client assumes sole responsibility for results obtained from the use of the Software and/or Services by the Client, and for conclusions drawn from such use. Incremental shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Incremental by the Client in connection with the Services and/or Deliverables, or any actions taken by Incremental at the Client's direction.

13 Indemnification

- 13.1 Incremental will indemnify, defend and hold the Client (and its officers, directors and employees) ("Client Indemnitees") harmless from and against any and all claims, losses, liabilities, damages, costs and expenses sought or otherwise claimed by a third party (including reasonable legal fees incurred by the Client in connection therewith) (each, a "Third Party Claim") to the extent arising out of an allegation that any Incremental Software and/or Modifications provided to the Client hereunder infringes on any copyright, patent or other proprietary right of any third party or misappropriates any trade secret of a third party (each, an "Infringement Claim").
- 13.2 If an Infringement Claim results in the Client's use of any Incremental Software and/or Modifications being enjoined or otherwise precluded, Incremental, at its sole option, will
- 13.2.1 replace the affected Incremental Software and/or Modifications with a compatible, functionally-equivalent and non-infringing product;
- 13.2.2 modify the Incremental Software and/or Modifications to create compatible, functionally-equivalent and non-infringing Incremental Software and/or Modifications; or
- 13.2.3 obtain a licence for the Client to continue to use the affected Incremental Software and/or Modifications. Provided that, if none of the foregoing is commercially practicable as determined by Incremental, the Client's licence or other right to use the affected Incremental Software and/or Modifications will terminate and Incremental will refund the fees paid by the Client for the relevant Incremental Software and/or Modifications.
- 13.3 Incremental's performance of its obligations under this clause 13 represents the Client's sole remedy and Incremental's total liability and full obligation to the Client with respect to any Infringement Claim, and the Client will have no other claims against Incremental in connection with or as a consequence of any such Infringement Claim.
- 13.4 Incremental will have no obligation hereunder for any Infringement Claim which arises by reason of:
- 13.4.1 the modification of or the misuse of any Incremental Software and/or Modifications by the Client or a third party;
- 13.4.2 the combination, operation or use of any Incremental Software and/or Modifications by the Client or a third party with equipment, software or data not supplied by Incremental if an Infringement Claim would not have occurred but for such combination, operation or use; or
- 13.4.3 the Client's failure to use any updated or modified Incremental Software and/or Modifications provided by Incremental to avoid an Infringement Claim.



- 13.5 The Client will defend, indemnify and hold harmless Incremental (and its officers, directors and employees) ("Incremental Indemnitees") from and against any and all Third Party Claims to the extent arising out of:
- 13.5.1 the Client's installation of Third Party Software without Incremental's assistance; or
- 13.5.2 any allegation that Incremental's use of the Client Materials infringes on any copyright, patent or other proprietary right of any third party or misappropriates any trade secret of a third party (each, a "Client Infringement Claim").
- 13.6 The Client's performance of its obligations under this clause 13.6 represents Incremental's sole remedy and the Client's total liability and full obligation to Incremental with respect to any claim or demand described under this clause 13.6 and Incremental will have no other claims against the Client in connection with or as a consequence of any Client Infringement Claim. The Client will have no obligation hereunder for any Client Infringement Claim which arises by reason of:
- 13.6.1 the modification or misuse of any Client Materials by Incremental;
- 13.6.2 the combination, operation or use of any Client Materials by Incremental with equipment, software or data not supplied by the Client if a Client Infringement Claim would not have occurred but for such combination, operation or use; or
- 13.6.3 Incremental's failure to use updated or modified Client Materials provided by the Client to avoid a Client Infringement Claim.
- 13.7 The indemnified party will provide prompt written notice of any Third Party Claim subject to indemnity to the indemnifying party; provided that failure to give such notice will not reduce the indemnifying party's obligations under this clause 13 except to the extent that the indemnifying party is prejudiced thereby. The indemnifying party will control the defence and settlement of any Third Party Claim hereunder; provided that the indemnified party may participate in the defence and settlement of such Third Party Claim with its own counsel at its own expense. The indemnified party will provide all reasonable cooperation and assistance requested by the indemnifying party in the defence and settlement of any Third Party Claim at the indemnifying party's expense. The indemnifying party will not be responsible for any costs incurred or compromise made by the indemnified party without the indemnifying party's prior written consent. The indemnifying party may not enter into any settlement that imposes a financial obligation on or otherwise materially adversely impacts the indemnified party without the indemnified party's prior written consent.

14 Personnel

- 14.1 Incremental personnel performing Services for the Client under this Contract may perform similar services for other clients during or after the Contract expires or completes. Incremental will make reasonable efforts to honour specific requests of the Client regarding the assignment of Incremental personnel; however, Incremental reserves the sole right to make and change all such assignments. On receipt of a written request by the Client detailing lawful reasons for removal of any Incremental personnel, Incremental will promptly withdraw or replace such personnel at no additional cost to the Client.
- 14.2 Incremental will use diligent efforts to provide personnel in accordance with the estimates and schedules provided to the Client in the Contract. Should any personnel be unable to perform scheduled Services because of illness, resignation or other causes beyond Incremental's control, Incremental will promptly replace such unavailable personnel and familiarise and/ or train such replacement personnel as necessary at no cost to the Client.

15 Non-Solicitation

- 15.1 During the term of the Contract and for 12 months thereafter, neither party, directly or indirectly, will solicit for employment or for engagement as an independent contractor, or encourage leaving its employment or engagement, any employee or independent contractor of the other party known to the soliciting party solely through this Contract. For the avoidance of doubt, general public advertisements for employment or engagement and any individual's response thereto will not be deemed a violation of this clause 15. Any breach of this clause 15 would damage the other party in an amount difficult to ascertain with certainty; therefore, on any breach hereunder, the breaching party will pay to the other party an amount equal to the annual compensation (with the non-breaching party) of the applicable employee or independent contractor.

16 Publicity

- 16.1 Incremental may refer publicly to the Client's name as a client of Incremental, provided Incremental does not disclose any information which is confidential to the Client.
- 16.2 With the Client's prior written consent, unless and to the extent that the Contract has been the subject of a press or other public announcement approved by the Client, Incremental may use the Client's name in describing or promoting Incremental's services on its website and in its marketing materials or other documents listing Incremental's qualifications, experience and companies for which Incremental has provided professional services. The Client also acknowledges its willingness to discuss participation in case studies with Incremental upon request, subject always to the Client receiving and approving the final version of any and all such materials prior to public release.

17 Complaints

- 17.1 If at any time the Client is dissatisfied with Incremental's service, the Client should raise this with the project manager responsible for the work concerned and/or the named contact in the Order Acceptance. If the Client would prefer not to do that or if the Client considers that the matter has not been satisfactorily resolved, the Client should address a letter to the Chief Executive Officer of Incremental. Incremental makes all efforts to deal with any complaints as speedily as possible in accordance with its defined and documented complaint handling process.

18 Variation, Severability and Waiver

- 18.1 These Terms may be varied by Incremental at any time on giving the Client adequate notice in writing (including by e-mail).
- 18.2 If and in so far as any part or provision of these Terms is or becomes void or unenforceable, it shall be deemed not to be, or never to have been or formed, a part of the Terms and the remaining provisions shall continue in full force and effect.
- 18.3 The failure of either party to exercise or enforce any right conferred on that party by these Terms shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.



19 Assignment

- 19.1 Either party may assign this Contract in its entirety, whether by operation of contract, law or otherwise, to any entity that acquires control of the assigning party, whether by merger, sale or otherwise, and Incremental, on written notice to the Client, may assign this Contract in its entirety to any of its Affiliates. Any other assignment of the Contract will require the prior written consent of the other party, which will not be unreasonably withheld or delayed.

20 Third Party Rights

- 20.1 The parties hereto are independent of each other, and no agency, partnership, joint venture or employer-employee relationship is intended or created by this Contract and, save to the extent expressly set out in the Contract, these Terms are not intended to create, nor shall they create any rights, entitlement, claims or benefits enforceable by any person that is not a party to them. The parties do not intend that any term of this Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.

21 Law

- 21.1 Incremental's appointment and the provision of Services and/or Deliverables under the Contract are governed by the law of Scotland and the Client agrees that the Scottish courts will have non-exclusive jurisdiction in any dispute or other matter relating to them.