

1. DEFINITIONS

In this Contract the following words have the following meanings:

- 1.1 **"Affiliate"** means any direct or indirect Holding Company or Subsidiary Company of the relevant entity. A Company is a **"Subsidiary"** of another Company, if the latter company (**"Holding Company"**): (a) holds a majority of the voting rights in it; or (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it. **"Company"** includes any body corporate or any legal entity capable under law of making a contract.
- 1.2 **"Client Infrastructure"** means the Client's systems and technical infrastructure, including those systems that directly or indirectly interface and/or are interoperable with, and/or impact on, the Services, and which are not under Supplier's management and control and explicitly identified as Supplier's responsibility under this Contract, including software provided by Client-Contracted Software Vendors and services supplied by Client-Contracted Services Providers, but excluding the Connectivity Infrastructure.
- 1.3 **"Client"** means the 'Client' specified in the Order Form.
- 1.4 **"Connectivity Infrastructure"** means the internet, telecommunications links, broadband and/or third party software and systems which are neither owned or supplied by the Supplier or the Client and which connect the Services and/or the Supplier Software to wide area networks.
- 1.5 **"Contract"** means these MSA Terms & Conditions, the Order Form, and the Schedules.
- 1.6 **"Costs"** means costs, liabilities, penalties, and charges.
- 1.7 **"Deliverables"** means the output/deliverables in respect of any Services, excluding any Materials.
- 1.8 **"Effective Date"** means the contract date specified in the Order Form.
- 1.9 **"Fees"** means the fees and charges specified in the Order Form and the SOW(s).
- 1.10 **"First Payment Date"** means the date identified in the Order Form as the 'First Payment Date' (or otherwise, the Target Go-Live Date).
- 1.11 **"Hosted Services"** means 'Hosted Services' as described in the Order Form.
- 1.12 **"Intellectual Property Rights"** means all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trade marks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature for the full duration of such rights, including any extensions or renewals.
- 1.13 **"Law"** means any applicable laws, regulations, regulatory constraints, obligations, proclamations, rules (including binding codes of practice and statement of principles incorporated and contained in such rules), or applicable judgment of a relevant court of law which is a binding precedent, in each case in force in any jurisdiction that is or may be applicable to this Contract.
- 1.14 **"Licensing Purpose"** means in the ordinary course of the Client's business and for the use(s) envisaged in the Supplier's published marketing materials of the Hosted Services.
- 1.15 **"Materials"** means any tangible materials delivered by Supplier to the Client under this Contract or any SOW(s).
- 1.16 **"Minimum Term"** means the period of years identified in the Order Form as the 'Minimum Term'.
- 1.17 **"MSA T&Cs"** means these MSA Terms & Conditions.
- 1.18 **"Order Form"** means the foregoing 'Services Order'.

- 1.19 **"Services"** means Set-up and Implementation Services, Supplier Software, Hosted Services and additional professional services from time to time upon the completion of a Statement of Work.
- 1.20 **"Set-up and Implementation Services"** means 'Set-up and Implementation Services' as described in the Order Form.
- 1.21 **"SLA"** means the 'Service Level Agreement' set out at Schedule 1.
- 1.22 **"Software"** means the Supplier Software, and any software supplied pursuant to this Contract, including all new releases, new versions, updates, and modifications thereto.
- 1.23 **"Statement of Work" or "SOW"** means a contract for specified professional services that is made in accordance with Clause 4.2.
- 1.24 **"Supplier Software"** means the 'Supplier Software' described in the Order Form, including all new releases, new versions, updates, and modifications thereto.
- 1.25 **"Supplier"** means the 'Supplier' specified in the Order Form.
- 1.26 **"System Access"** the local and wide area access to the Client Infrastructure as required by the Supplier in order to provide the Services pursuant to this Contract.
- 1.27 **"Target Go-Live Date"** means the target date (advised by the Supplier) on which the Client should put the Hosted Services into live and/or operational use.
- 1.28 **"User Data"** means any information, materials, or data: (a) uploaded, stored or created in or using the Supplier Software by: (i) the Client or its users; or (ii) by the Supplier or a third party on the Client's or its users' instructions; and/or (b) provided to the Supplier by (or on behalf of) the Client or its users.

2. HOSTED SERVICES

- 2.1 From the Target Go-Live Date the Supplier shall provide Hosted Services substantially in accordance with the SLA with reasonable skill and care in accordance with good industry practice, subject to the terms of this Contract and provided that the Supplier does not warrant that the Client's use of Hosted Services will be uninterrupted or error free. The Supplier shall use its reasonable endeavours to meet the timescales specified in the SLA. Resolution times are targets rather than guarantees.
- 2.2 Subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable licence for the duration of this Contract to: (a) permit its authorised users to use the Supplier Software via the Hosted Services for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order Form; and (b) use the Materials and Deliverables for the Licensing Purpose.
The Supplier grants to the Client a non-exclusive non-transferable perpetual irrevocable licence (surviving termination of this Agreement; other than termination for the Client's material breach) to use the Client specific Deliverables for the Licensing Purpose.
- 2.3 The Supplier shall not be responsible for any failure to provide Hosted Services as a result of a failure by the Client to comply with its responsibilities under this Contract and: (a) errors in or corruption of the Client Infrastructure, Connectivity Infrastructure, and/or the Client's data; and/or (b) the occurrence of a Suspension Event.
- 2.4 The Supplier reserves the right at its sole discretion to suspend Hosted Services in the event of (each of which shall be a **"Suspension Event"**): (a) scheduled maintenance services (for which the Supplier shall give to the Client as much notice as is reasonably practicable in the circumstances); (b) a material breach by the Client of the terms of this Contract (including a failure to pay the Fees in accordance with Clause 6); (c) where ongoing use by the Client of Hosted Services has, in the Supplier's reasonable opinion, the prospect of damaging Hosted

Services or degrading performance, whether due to failures in or problems with the Client Infrastructure, failures in or problems with the Connectivity Infrastructure, or the occurrence of an Event of Force Majeure.

- 2.5 In the event of a failure by the Supplier to provide Hosted Services in accordance with this Contract, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such failure(s) promptly (which may include the provision of a temporary workaround) in accordance with the SLA. The Supplier's provision of corrective services in accordance with this Clause 2.5 shall constitute the Client's exclusive remedy for any breach of Clause 2.1. Nothing in this Clause 2.5 purports to limit the Supplier's liability for any failure of the Supplier to comply with this Clause 2.5 (for which the provisions of Clause 12 shall apply).

3. CLIENT'S RESPONSIBILITIES

- 3.1 The Client shall: (a) undertake all reasonable enquiries to satisfy itself that the Services are suitable for its needs before entering into this Contract; (b) adopt such processes and make such changes to its working practices as are necessary to make effective use of the Services; (c) have in place appropriate Client Infrastructure and Connectivity Infrastructure necessary for the provision of Services; (d) maintain and upgrade the Client Infrastructure and Connectivity Infrastructure in accordance with good industry practice, the Supplier's reasonable instructions, and any minimum environment recommendations published as part of Software specifications/guidelines; (e) carry out all of its responsibilities set out in this Contract in a timely and efficient manner and, in particular, not act (or fail to act) in a manner that will delay or otherwise adversely impact on the Supplier (or its subcontractors) performance of Services; (f) provide the Supplier with all necessary information, co-operation, and assistance as may be required by the Supplier in order to provide Services; (g) comply with the Law with respect to its activities under this Contract; (h) provide the Supplier with such technical support, information, and access to systems and/or data as the Supplier reasonably requires in order to maintain System Access for the duration of this Contract; (i) reasonably determine whether it is appropriate (as a matter of good industry practice) to implement any form of additional back-up of User Data (in addition to such back-ups maintained by the Supplier as part of the Hosted Services) and if so either commission directly (or via the Supplier, if available) such additional data back-up services; (j) ensure that any data (including User Data) migrated to the Supplier as part of any data migration project is appropriately cleansed and is free from corruption or material errors; (k) not reverse engineer or decompile the Software (or attempt to do the same), save to the extent permitted by Law.
- 3.2 The Client recognises that the availability of the Hosted Services is, in part, dependent on the stability of the Connectivity Infrastructure, and that changes to the Connectivity Infrastructure may result in the loss of availability of (or the material degradation of) the Hosted Services. The Client shall not make changes to those elements of the Connectivity Infrastructure that are within its control, without the authorisation of the Supplier. The parties agree that changes to Connectivity Infrastructure that are outside of both parties control (and the consequences of such changes) are not the responsibility of either party; save that both parties shall use their reasonable endeavours to mitigate the adverse impact of such changes on the Hosted Services.
- 3.3 The Client shall permit the Supplier, on reasonable notice, to test the Client Infrastructure. In the event that the Supplier reasonably considers that the Client Infrastructure is inadequate and/or is (or may be) responsible for performance or functionality failures or degradation, the Client shall make such changes to Client Infrastructure (whether configuration or upgrades) as the Supplier may reasonably recommend.

4. SERVICES

- 4.1 Services will be provided pursuant to this Contract if and to the extent that such Services are specified in the Order Form.
- 4.2 This Contract also operates as a framework under which Services may be provided if the parties agree any SOW(s) by completing an SOW pro forma, as set out at Schedule 2. An SOW is deemed completed and binding on the parties if: (a) it is signed by both parties; or (b) it is raised by the Supplier in accordance with Clause 4.3 below. Each completed SOW is a separate contract for Services. The completed SOW incorporates all the terms of this Contract that directly or indirectly relate to the SOW.
- 4.3 In the event that Services are undertaken by the Supplier on the written request of the Client and it is not reasonably practicable to populate and execute an SOW in respect of such services prior to such services commencing, as soon as reasonably practicable thereafter the Supplier shall raise a retrospective SOW capturing the Services ordered by the Client, with the fees calculated either on a time and materials basis or as a fixed price as specified in an SOW. Such an SOW will not require the Client's signature to be binding on the parties.
- 4.4 The Supplier shall provide Services using reasonable care and skill and in accordance with good industry practice. Both parties shall use their reasonable endeavours to meet the timescales specified in the SOW(s). The Supplier shall not be responsible for any failure to achieve deadlines or milestones in the SOW(s) to the extent that the failure has been caused by any delay or default on the part of the Client. Time shall not be of the essence in relation to the Supplier's performance.

5. PERSONNEL

- 5.1 Each party shall appoint the personnel as specified in the Order Form ("Key Personnel"). Each party shall ensure that its Key Personnel shall be contactable using the contact details specified in the Order Form (as updated from time to time). Each party shall inform the other promptly if any of its Key Personnel resigns or for any other reason ceases to work under this Contract.
- 5.2 Each party shall use their reasonable endeavours to maintain the continuity of their Key Personnel in respect of the management of this Contract, and if such Key Personnel become unavailable, each party shall promptly replace such individuals and ensure that any disruption to the Contract is minimised.

6. PAYMENT

- 6.1 The Client shall pay: (a) Fees as and when they fall due for payment, as specified in the Order Form; and (b) Fees for Services in the manner specified in the SOW(s) or otherwise fixed as specified under an SOW.
- 6.2 The Supplier shall be entitled to raise invoices for Fees and charges as and when they fall due for payment under Clause 6.1.
- 6.3 The Client shall pay the Supplier's invoices either: (a) within thirty (30) days of the date of the invoice (or within such shorter period as specified in the Order Form); or (b) by direct debit or standing order (if applicable; and if specified in the Order Form).
- 6.4 The Client may not withhold payment of any amount due to the Supplier because of any set-off, counter-claim, abatement, or other similar deduction.
- 6.5 All fees payable by the Client to the Supplier under this Contract are payable in Pounds Sterling (unless another currency is specified in the Order Form) and are exclusive of any tax, levy or similar governmental charges, including value added or sales tax, that may be assessed by any jurisdiction, except for income, net worth or franchise taxes on the Supplier.
- 6.6 If any sum payable under this Contract is not paid ten (10) days after the due date for payment then (without

prejudice to the Supplier's other rights and remedies) the Supplier reserves the right to charge interest on that sum on a daily compounded basis (before as well as after any judgment) at the annual rate of ten per cent measured from the due date to the date of payment, provided that at no time shall the Client be required to pay interest at an effective rate higher than legally permissible.

- 6.7 All Fees shall increase on each anniversary of the First Payment Date by an amount, as notified by the Supplier, that does not exceed five per cent (5%), measured between the date of review and the last review date (or in the event of the first review date, the First Payment Date) ("**Indexed Increase**").
- 6.8 Unless otherwise specified in the Order Form, after the expiry of the Minimum Term, the Supplier shall be entitled by giving the Client not less than ninety (90) days' written notice prior to an anniversary of the First Payment Date ("**Anniversary Date**") to increase any or all Fees with effect from the Anniversary Date by an amount that exceeds an Indexed Increase (as determined by the Supplier in its sole discretion) ("**General Increase**"), provided that if the Client objects to a General Increase it shall be entitled to terminate this Contract with effect from the Anniversary Date by giving to the Supplier not less than sixty (60) days' written notice prior to the Anniversary Date.

7. PROPERTY RIGHTS

- 7.1 Title to the Materials is and shall at times remain with the Supplier unless otherwise specified in the Order Form or an SOW. The Supplier and its licensors owns and shall continue to own all Intellectual Property Rights in the Supplier Software, and any Deliverables. Full and unencumbered title (with full title guarantee) in Deliverables shall vest in the Supplier absolutely upon creation. The Client undertakes at the request of the Supplier at all times from the date of this Contract to, and to procure that any and all of its sub-contractors and any third party involved in any SOW(s) shall, do all acts and execute all documents, papers, forms and authorisations and to dispose to or swear all declarations or oaths reasonably necessary and/or desirable to give effect to the provisions of this Clause 7.1.

8. TERM AND TERMINATION

- 8.1 **This Contract.** This Contract is formed (and becomes legally binding) when the parties complete and sign the Order Form. This Contract shall commence on the Effective Date and shall continue unless and until terminated by either party in accordance with this Clause 8.
- (i) Either party shall be entitled to terminate this Contract on expiry of the Minimum Term specified in the Order Form and each subsequent anniversary of the First Payment Date by giving to the other party not less than ninety (90) days' prior written notice.
 - (ii) Either party shall be entitled to terminate this Contract immediately if the other party commits any material breach of this Contract and fails to remedy that breach within thirty (30) days of written notice of that breach (the 30 day period only applies where a breach is capable of remedy - if it is incapable of remedy, the Contract may be terminated by written notice immediately).
- 8.2 **SOW(s).** The SOW(s) shall commence in accordance with Clause 4.2 and shall terminate on completion of the Services or in accordance with this Clause 8.2.
- (i) Either party shall be entitled to terminate any SOW(s) immediately by giving to the other party not less than ninety (90) days' prior written notice.

- (ii) Either party shall be entitled to terminate any SOW(s) immediately by giving written notice to the other party if that other party commits any material breach of the applicable SOW that is incapable of remedy (if the breach is capable of remedy, this Contract may be terminated immediately if the other party fails to remedy that breach within thirty (30) days of written notice).

- 8.3 **Insolvency.** Either party shall be entitled to terminate either this Contract and/or any SOW(s) immediately by giving written notice to the other party if that other party has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.

9. CONSEQUENCES OF TERMINATION

- 9.1 On termination of this Contract or any SOW(s) howsoever caused: (a) the rights and duties created by Clauses 6, 7, 10, 11, 12, 15, 16, and 17 shall survive; (b) the rights of either party which arose on or before termination shall be unaffected.
- 9.2 On termination of this Contract howsoever caused: (a) the SOW(s) shall be unaffected; (b) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under this Contract in accordance with that other party's reasonable instructions; (c) all licences granted shall terminate; and (d) the parties shall cooperate as regards the migration of User Data to the Client, subject to any data retention that is required by Law.
- 9.3 On termination of any SOW(s) howsoever caused: (a) other SOW(s) and the Contract shall be unaffected; and (b) each party shall return, in good condition, the tangible property of the other party (if any) that was made available under the SOW(s) in accordance with that other party's reasonable instructions. In the event that termination of the SOW(s) precedes completion of the Services: (i) the Supplier shall make such partial delivery to the Client of the Materials and Deliverables as is reasonably practicable, such Materials and Deliverables to be provided on an "AS IS" basis; and (ii) if the parties had agreed to a fixed price under the SOW(s), the Supplier may (at its sole discretion) reduce the fixed price by an amount that reasonably reflects both the value of the Services that have been provided under the SOW(s) and the cost to the Supplier of providing such Services.

10. CONFIDENTIALITY

- 10.1 Each party that receives ("**Receiving Party**") non-public business or financial information (excluding the receipt by the Supplier of Cleansed Data) ("**Confidential Information**") from the other (or the other's Affiliates) ("**Disclosing Party**"), whether before or after the date of this Contract shall:
- (i) keep the Confidential Information confidential;
 - (ii) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 10.2, or 10.3; and
 - (iii) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Contract ("**Permitted Purpose**").
- 10.2 The Receiving Party may disclose Confidential Information to its own, or any of its Affiliates, officers, directors, employees agents and advisers who reasonably need to know for the Permitted Purpose (each a "**Permitted Third Party**"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and

compliance with the terms of this Clause 10 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 10.

10.3 If required by Law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.

10.4 The parties agree that any breach of the restrictions contained in this Clause 10 may cause irreparable harm to the innocent party, whereupon the innocent party shall be entitled to injunctive relief without the necessity of proving damages or the inadequacy of money damages, posting any bond or other security in addition to all other legal or equitable remedies.

11. DATA

11.1 The Supplier shall not own (or claim ownership rights in respect of) User Data.

11.2 The Client is responsible for the accuracy, reliability, lawfulness, and integrity of all User Data. The Client warrants that User Data shall not be defamatory or offensive and that it, and its users, have all consents, licenses and permissions (including the consent of any Data Subjects) in respect of User Data as are required for Client (and its users) to lawfully upload, store, distribute, publish, share and/or Process the User Data (as applicable): (a) in/through the Supplier Software; and/or (b) to/with other Client users or any third parties who are authorised by the Client or by Law to view/access the User Data. The Client shall indemnify and hold harmless the Supplier for Costs arising from a breach of this Clause 11.2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this Clause 11.2.

11.3 The Client acknowledges that the provision of high-quality services requires the Supplier to analyse data to identify trends, optimise services, and provide clients with the opportunity to use such information to enhance their own services. The Client therefore grants to the Supplier a non-exclusive, perpetual, irrevocable, royalty free, worldwide licence to use, modify, adapt, and create derivative works of User Data for any purposes, and commercially exploit and/or sublicense any or all of such rights on any terms, provided always that such User Data must at all times be cleansed such that individuals, the Client, and/or any legal entities cannot be identified in any circumstances ("**Cleansed Data**").

11.4 The parties shall comply with Schedule 4.

12. LIABILITY

12.1 Neither party shall exclude or limit its liability for:

- (i) death or personal injury caused by its negligence;
- (ii) fraudulent misrepresentation; and/or
- (iii) breach of Clause 10.

12.2 The Supplier shall not be liable for loss of profit, loss of revenue, loss of anticipated savings, or loss of goodwill.

12.3 The Client agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into this Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).

12.4 The Supplier's Contractual Liability to the Client shall not exceed one hundred and fifty per cent (150%) of the fees paid (plus any unpaid fees that are payable) under the Contract (but not any SOW) in the 12 month period prior to the date in which the claim (or series of connected claims) arose. "**Contractual Liability**" means liability

however arising under or in relation to the subject matter of this Contract that is not:

- (i) unlimited by virtue of Clause 12.1; or
- (ii) excluded pursuant to Clauses 12.2 and 12.3.

12.5 The Supplier's SOW Liability to the Client shall not exceed the fees paid (plus any unpaid fees that are payable) under the SOW under which the claim (or series of connected claims) arose. "**SOW Liability**" means liability howsoever arising under or in relation to the subject matter of the SOW under which the claim (or series of connected claims) arose that is not: (a) unlimited by virtue of Clause 12.1; (b) excluded pursuant to Clauses 12.2, 12.3, and 12.4.

12.6 Except as expressly provided in this Contract, the Supplier hereby excludes any implied condition or warranty concerning the merchantability, quality or fitness for purpose of its services, whether such condition or warranty is implied by statute or common law.

12.7 Neither party shall be liable for any delay or failure in performing its duties under this Contract caused by any circumstances beyond its reasonable control. Without limitation, the following shall be regarded as causes beyond either party's reasonable control: (a) act of God, explosion, flood, tempest, fire or accident; (b) unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites; (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or export regulations or embargoes; (e) any change in any Law(s) that has an impact on the parties' rights and/or responsibilities under this Contract; (f) any breach by a third party of the Computer Misuse Act 1990 or the Communications Act 2003 that has the object or effect of directly or indirectly interfering with or damaging the Client Infrastructure, and/or the Supplier's hardware, software and/or network infrastructure (g) any government guidance or instruction(s) applicable to either party or its suppliers, arising as a result of any epidemic, pandemic, or outbreak of disease; each an "**Event of Force Majeure**".

13. ASSIGNMENT AND SUBCONTRACTING

13.1 Neither party shall assign or otherwise transfer this Contract or any of its rights and duties under this Contract without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that the Supplier shall be entitled (and the Client hereby irrevocably consents) to assign in whole or in part, or novate the entirety of this Contract, to any Affiliate as part of a bona fide corporate restructuring by providing not less than seven (7) days' prior written notice to the Client.

13.2 The Supplier may sub-contract the performance of any of its duties. The Supplier shall be entitled, at its sole discretion, to replace such service providers from time to time without notice to the Client.

13.3 The rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

14. CHANGES

14.1 Subject to Clause 14.4, no changes to this Contract or the SOW(s) shall be valid unless made in writing and signed by the authorised representatives of both parties.

14.2 Either party shall be entitled from time to time to request a change to the scope of the Services ("**Change**"). Neither party shall be entitled to charge for considering and/or negotiating a Change unless such consideration requires the Supplier to undertake detailed scoping in which case the Supplier shall be entitled to charge pursuant to an SOW.

14.3 A Change will be effective when it is documented in writing in a standard Supplier change control form.

14.4 The Supplier reserves the right to make changes to Hosted Services from time to time provided that the Supplier has given the Client not less than sixty (60) days'

prior written notice of such change (a “**Change Notice**”) and provided further that in the event that such a change removes material Hosted Services functionality to the material detriment of the Client’s use of Hosted Services the Client shall be entitled by giving the Supplier not less than thirty (30) days’ prior written notice prior to the Change Notice taking effect to terminate this Contract. In the event that the Client has prepaid Fees covering a period that is shortened by termination by the Client in accordance with this Clause 14.4, the Supplier shall refund to the Client a proportion of the prepaid Fees in respect of such period, pro rated on a daily basis. This Clause 14.4 is without prejudice to the Supplier’s rights under the SLA.

- 14.5 Neither party shall unreasonably withhold its consent to the other’s request to re-schedule the date or time of performance of Services. However, given that it will not be practical for the Supplier to re-schedule resources on short notice, the parties agree that: (a) if the Client gives to the Supplier less than two (2) clear days’ notice of such a request then the Client must pay to the Supplier the full value of such booked Services; (b) if the Client gives to the Supplier between two (2) and seven (7) clear days’ notice of such a request then the Client must pay to the Supplier fifty per cent (50%) of the full value of such booked Services. For the purpose of this Clause 14.5, a “**day**” excludes Saturday, Sunday, and public holidays.

15. NON-SOLICITATION

- 15.1 For the duration of this Contract and a period of twelve (12) months thereafter, each party shall not, and shall ensure that any of its Affiliates shall not, without the prior written consent of the other, solicit, entice away, and/or actively initiate recruitment (whether directly or indirectly) of any employee of the other who performed (or is performing) a material function for the other party (excluding administrative, secretarial, or other back-office functions).
- 15.2 If a party breaches Clause 15.1, it shall pay the other party an amount equal to the last twelve (12) months’ salary of the applicable individual in recognition of the value of the individual to the other party and cost of recruiting and training a replacement. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by the other party in these circumstances and not a penalty.

16. DISPUTES

- 16.1 The parties shall attempt to resolve any dispute arising out of or relating to this Contract (including any dispute relating to any non-contractual obligations arising out of or in connection with it) (the “**Dispute**”) through discussions between senior representatives.
- 16.2 Where the Dispute is not resolved within forty (40) days of the start of discussions in accordance with Clause 16.1 above, the parties shall attempt to resolve the Dispute in good faith through an Alternative Dispute Resolution (“**ADR**”) procedure as recommended by the Centre for Effective Dispute Resolution.
- 16.3 If the Dispute has not been resolved by an ADR procedure within forty (40) days of the initiation of that procedure, or if either of the Supplier or the Client will not participate in an ADR procedure, either of the parties shall be entitled to refer the Dispute to the High Court of England and Wales and the parties submit to its exclusive jurisdiction for that purpose.
- 16.4 Clauses 16.1 to 16.3 above shall not restrict either party’s ability to commence court proceedings in respect of any:
- (i) matter relating to its Confidential Information or Intellectual Property Rights; and/or
 - (ii) unpaid invoice.

17. GENERAL PROVISIONS

- 17.1 **Publicity.** The Client hereby irrevocably consents to the Supplier referring to the Client as a client of the Supplier in its sales and marketing literature (including its web site).
- 17.2 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Contract.
- 17.3 **Relationship.** Nothing in this Contract shall render the Client a partner or an agent of the Supplier and the Client shall not purport to undertake any obligation on the Supplier’s behalf nor expose the Supplier to any liability nor pledge or purport to pledge the Supplier’s credit.
- 17.4 **Entire Agreement.** This Contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.
- 17.5 **Severance.** If any part of this Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Contract shall remain in effect.
- 17.6 **No Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.
- 17.7 **No Bribery.** Each party warrants to the other that it: (a) has not and will not commit an offence under the Bribery Act 2010 in relation to this Contract or any other contract between the parties; and (b) has adequate procedures (as defined in section 7(2) of that Act) in place to prevent its associated persons from committing an offence under that Act.
- 17.8 **Counterparts.** This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.
- 17.9 **Notices.** All notices (which include invoices and correspondence) under this Contract shall be in writing and shall be sent to the address of the recipient set out in this Contract or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally, by a reputable courier service, by first-class post, or by email and shall be deemed to have been served if by hand when delivered, if by courier service or first class post 48 hours after delivery to the courier or posting (as the case may be), or if by email immediately.
- 17.10 **Interpretation.** In this Contract: (a) any reference to a Clause means a reference to a Clause of this Contract unless the context requires otherwise; (b) unless the context otherwise requires, the words “**including**” and “**include**” and words of similar effect shall not be deemed to limit the general effect of the words which precede them; (c) the headings are for ease of reference only and shall not affect the construction or interpretation of the Contract; and (d) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.
- 17.11 **Hierarchy.** To the extent there is any inconsistency between the provisions of these MSA Terms & Conditions, the Order Form, the Schedules, the SOW(s), any documents incorporated into this Contract, and any documents incorporated into the SOW(s) the following order of precedence shall apply: (a) first these MSA Terms & Conditions; (b) second the Schedules; (c) third the Order Form; (d) fourth the SOW(s); (e) fifth documents incorporated into the SOW(s); and (f) sixth documents incorporated into this Contract.
- 17.12 **Law.** This Contract is governed by the laws of England.

Contract Information

INTRODUCTION

- This Order Form is used to enter into a contract under which the Supplier will provide: (a) set-up and implementation services; (b) software; (c) hosted services; and (d) additional professional services from time to time upon the completion of a Statement of Work.
- When both parties complete and sign this Order Form, the parties have a legally binding Contract incorporating this Order Form, the attached MSA Terms & Conditions, and the attached Schedules.
- Schedule 2 to this Contract is a pro forma SOW. This Schedule should not be completed on execution of this Contract. If additional professional services are to be provided by the Supplier which are outside of the scope of the Order Form, the contents of Schedule 2 should be replicated in a separate document, which should be completed by the Supplier and then signed by both parties.

CONTRACT DETAILS

Supplier	[specify contracting entity]
Client	[specify contracting entity]
Effective Date	[insert date] [specify contracting entity]
Minimum Term	[insert number of whole years, e.g. "3 years"]
First Payment Date	[insert date: note the anniversary of the contract is measured by reference to the First Payment Date, so a three year Minimum Term will be terminable on the third anniversary of the First Payment Date]

CONTACT INFORMATION

Client Technical Contact	Name		Client Billing Contact	Name	
	Address			Address	
	Email			Email	
	Telephone			Telephone	
Supplier Technical Contact	Name		Supplier Account Manager	Name	
	Address			Address	
	Email			Email	
	Telephone			Telephone	

SIGNATURE

I confirm that I have read and agree to the Order Form, MSA Terms & Conditions, and Schedules, below, and all documents referenced therein.

Signed for and on behalf of the Supplier by:

Signed _____
Name _____
Position _____
Date _____

Signed for and on behalf of the Client by:

Signed _____
Name _____
Position _____
Date _____

Services

SET-UP AND IMPLEMENTATION SERVICES	
Implementation Services	[please insert or please reference the appropriate service description document and project plan]
Additional Client Responsibilities	[It is rare for a supplier to be able to perform services in isolation of the Client. The Client will also have responsibilities. The Contract sets out default Client responsibilities. If additional Client responsibilities apply, please provide details.]

HOSTED SERVICES		
Hosted Services	[details of hosted services]	
CLIENT-CONTRACTED SERVICES PROVIDERS		
Client-Contracted Services Providers	[details of Services Providers]	Not applicable? <input type="checkbox"/>
SUPPLIER-DISTRIBUTED SERVICE PROVIDERS		
Supplier-Distributed Service Providers	[details of Services Providers]	Not applicable? <input type="checkbox"/>

Software

SUPPLIER SOFTWARE		
Supplier Software	[details of software]	
Licensing Parameters	Number of users	
	Number of current users	
	Number of installation instances	
	Volumetrics	
	Single entity or company group use	
	Internal use only or use on behalf of third parties	
	Other	
CLIENT-CONTRACTED SOFTWARE VENDORS		
Software Vendor	[details of Software Vendor]	Not applicable? <input type="checkbox"/>
Licensing Parameters	Number of users	
	Number of current users	
	Number of installation instances	
	Volumetrics	
	Single entity or company group use	
	Internal use only or use on behalf of third parties	
	Other	
SUPPLIER-DISTRIBUTED SOFTWARE VENDORS		
Software Vendor	[details of Software Vendor]	Not applicable? <input type="checkbox"/>
Licensing Parameters	Number of users	
	Number of current users	
	Number of installation instances	
	Volumetrics	
	Single entity or company group use	
	Internal use only or use on behalf of third parties	
	Other	

OPEN SOURCE SOFTWARE LICENSING		
		Not applicable? <input type="checkbox"/>
Open source licensing components	Open source licence	

Fees

SET-UP AND IMPLEMENTATION FEES		
Time and Materials <i>Determined by multiplying the applicable rates by the actual time undertaken. For work undertaken at the request of the Client outside of Working Hours, the hourly rate shall be multiplied by 1.5</i>	Role	Rate (per hour/day as indicated)
Fixed Price	Amount	Payable on
Expenses	The Client shall pay any expenses reasonably incurred by the Supplier in performing its duties under this Contract, including travel, accommodation, subsistence and telecommunication expenses.	

HOSTED SERVICES FEES		
First Payment Date	See "Contract Details" above.	
	Annual Amount	Payment Terms
[please specify fee]		[Annually in advance on the First Payment Date and each anniversary] OR [Quarterly in advance on the First Payment Date and commencement of each consecutive three month period thereafter]
[please specify fee]		
[please specify fee]		
Annual Total		

CLIENT-CONTRACTED SERVICES PROVIDER FEES			
	Annual Amount	Payment Terms	Not applicable? <input type="checkbox"/>
[please specify fee]		[Annually in advance on the First Payment Date and each anniversary] OR [Quarterly in advance on the First Payment Date and commencement of each consecutive three month period thereafter]	
[please specify fee]			
[please specify fee]			
Annual Total			

SUPPLIER-DISTRIBUTED SERVICE PROVIDER FEES			
	Annual Amount	Payment Terms	Not applicable? <input type="checkbox"/>
[please specify fee]		[Annually in advance on the First Payment Date and each anniversary] OR [Quarterly in advance on the First Payment Date and commencement of each consecutive three month period thereafter]	
[please specify fee]			
[please specify fee]			
Annual Total			

SUPPLIER SOFTWARE FEES

	Annual Amount	Payment Terms
[please specify fee]		[Annually in advance on the First Payment Date and each anniversary] OR [Quarterly in advance on the First Payment Date and commencement of each consecutive three month period thereafter]
[please specify fee]		
[please specify fee]		
Annual Total		

CLIENT-CONTRACTED SOFTWARE VENDOR FEES			
	Annual Amount	Payment Terms	Not applicable? <input type="checkbox"/>
[please specify fee]		[Annually in advance on the First Payment Date and each anniversary] OR [Quarterly in advance on the First Payment Date and commencement of each consecutive three month period thereafter]	
[please specify fee]			
[please specify fee]			
Annual Total			

SUPPLIER-DISTRIBUTED SOFTWARE VENDOR FEES			
	Annual Amount	Payment Terms	Not applicable? <input type="checkbox"/>
[please specify fee]		[Annually in advance on the First Payment Date and each anniversary] OR [Quarterly in advance on the First Payment Date and commencement of each consecutive three month period thereafter]	
[please specify fee]			
[please specify fee]			
Annual Total			

MSA: Schedule 1 – SLA

AVAILABILITY

- 1.1 The Supplier shall use its reasonable endeavours to make the Hosted Services available on a 99.5% basis, measured each calendar month. The target uptime set out in this paragraph shall be met if there are no Priority 0 or 1 incidents outstanding. The target uptime excludes downtime during maintenance (as set out in paragraphs 1.2 – 1.3 below).

MAINTENANCE

- 1.2 The Supplier shall from time to time provide and install: (a) minor improvements, updates, enhancements, error corrections, upgrade scripts, and changes to the Supplier Software (each containing updates to the help files and documentation) ("**Maintenance Releases**"); and (b) new releases, new versions, updates, and modifications to the Supplier Software that do not constitute New Products (as generally available in accordance with the Supplier's timetable for releasing new versions as amended from time to time and available on request including updates to the help files and documentation) ("**New Version**").
- 1.3 Nothing in this Contract shall entitle the Client to any new version of the Products which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product ("**New Product**").

SUPPORT

- 1.4 In response to errors in the Hosted Services and/or the Supplier Software reported to the Supplier's helpdesk in accordance with paragraphs 1.9 - 1.10 (below), the Supplier will provide the service levels specified at paragraphs 1.12 - 1.15 (below) provided the errors reported are not Out of Scope.
- 1.5 "**Out of Scope**" means errors that fall outside the scope of the Supplier's responsibilities under this Contract and/or result directly or indirectly from the Client's: (a) misuse or improper use of the Hosted Services and/or the Supplier Software; and/or (b) combination, merger, or use of the Hosted Services and/or the Supplier Software with any hardware or software outside the Client Infrastructure and/or Connectivity Infrastructure.
- 1.6 The parties may agree that the Supplier will provide certain support and maintenance services in respect of Out of Scope errors as Services under an SOW.

ENVIRONMENT

- 1.7 The Client is responsible for procuring and maintaining the Client Infrastructure and Connectivity Infrastructure.
- 1.8 Maintenance Releases and New Versions may require enhancements to the Client Infrastructure and Connectivity Infrastructure. The Supplier will advise the Client if such enhancements are required. The Client is responsible for procuring and implementing such enhancements. The parties may agree that the Supplier will provide assistance with implementation as Services under an SOW.

CONTACTING THE COMPANY

- 1.9 The Supplier's support operates during the "**Support Hours**": from 08:30 – 18:30, Monday – Friday, excluding public holidays in England).
- 1.10 The Client may only contact the Supplier in respect of support queries as follows:
(a) email: support@trillium.net ;
(b) telephone: 0203 880 1888 ;
(c) online at <https://support.trilliumsystems.net>
- 1.11 References to hours in this Service Level Agreement do not include hours outside the Support Hours.

SERVICE LEVELS

- 1.12 The Supplier will assign a reported incident with a unique support number. If the Supplier determines that the reported incident is a fault or error with the Hosted Services and/or the Supplier Software and is within the scope of paragraph 1.4 (above) it will: (a) categorise the incident in accordance with the incident categories detailed at paragraph 1.15 (below); and (b) deliver Solutions in accordance with the response times detailed below.
- 1.13 "**Solutions**" are fixes or workarounds that eliminate the incident or move the incident into a lower incident category, which are provided remotely and which may (or may not) include the Supplier providing Maintenance.
- 1.14 If and when a Solution moves an incident into a lower incident category, the response times of that lower incident category shall apply from the moment that the incident is re-categorised.
- 1.15 Incident categories and responses:

Incident Category	Response
Priority 0 (Mission Critical)	
The system is <u>not operational</u> .	Reasonable efforts to start work within 1 hour and to provide a Solution within 8 hours of starting work.
Priority 1 (Business Critical)	
<u>Material functionality</u> is not available that is <u>critical</u> to the Client's business and there is <u>no</u> temporary / short term workaround.	Reasonable efforts to start work within 2 hours and to provide a Solution within 16 hours of starting work.
Priority 2 (Serious)	
Priority 1 where there <u>is</u> a temporary / short term workaround. OR <u>Important</u> but <u>non-material</u> or <u>non-critical</u> functionality is not available and there is <u>no</u> temporary / short term workaround.	Reasonable efforts to start work within 4 hours and to provide a Solution within 40 hours of starting work.
Priority 3 (Normal)	
<u>Important</u> but <u>non-material</u> or <u>non-critical</u> functionality is not available and there <u>is</u> a temporary / short term workaround.	Reasonable efforts to start work within 8 hours and to provide a Solution within 80 hours of starting work.
Priority 4 (Minor)	
Any incident that is not Priority 0, Priority 1, Priority 2, or Priority 3.	Reasonable efforts to start work within 16 hours and to provide a Solution within 160 hours of starting work.
Priority 5 (Simple Change Request)	
Simple change request that requires estimation and implementation to UAT. Changes that require more than 4 hours of consultancy or development are regarded as out of scope for Support	Reasonable efforts to triage & estimate change request within 2 days; If simple change is within 4hrs of effort, to provide a solution for testing within 40 hours.

MSA: Schedule 2 – Template SOW

Statement of Work (SOW)

SOW ref.		
Client		
Services		
Service Description		
Client Responsibilities		
Fees and Payment		
Time and Materials <i>Determined by multiplying the applicable rates by the actual time undertaken. For work undertaken at the request of the Client outside of Working Hours, the hourly rate shall be multiplied by 1.5</i>	Role	Rate (per hour/day as indicated)
Fixed Price	Amount	Payable on
Expenses	The Client shall pay any expenses reasonably incurred by the Supplier in performing its duties under this SOW, including travel, accommodation, subsistence and telecommunication expenses.	
Contacts		
This SOW is made pursuant to the Contract between the Supplier and the Client and incorporates the terms thereof		
Signed for and on behalf of the Supplier:		Signed for and on behalf of the Client:
Signed _____		Signed _____
Name _____		Name _____
Position _____		Position _____
Date _____		Date _____

Change Control Notification (CCN)	
CCN ref.	
Client	
Specification of Changes	
Fees and Payment Consequences	
Expenses	The Client shall pay any expenses reasonably incurred by the Supplier in performing its duties under this SOW, including travel, accommodation, subsistence and telecommunication expenses.
This CCN is made pursuant to the Contract between the Supplier and the Client, and incorporates the terms thereof	
<div>Signed for and on behalf of the Supplier:</div> <div>Signed _____</div> <div>Name _____</div> <div>Position _____</div> <div>Date _____</div> <div>Signed for and on behalf of the Client:</div> <div>Signed _____</div> <div>Name _____</div> <div>Position _____</div> <div>Date _____</div>	

MSA: Schedule 4 – Data Processing

1 DEFINED TERMS

1.1 For the purposes of this Schedule 4:

- (i) **"Applicable Laws"** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or the Data Protection Legislation;
- (ii) **"Data Controller", "Data Subject", "Personal Data", "Data Processor", and "Process"** shall have the meaning specified in the Data Protection Legislation; and
- (iii) **"Data Protection Legislation"** means the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any related act or regulation in the UK, including statutory modification or re-enactment of it.

2 DATA PROCESSING TERMS

2.1 In relation to the Processing of any Personal Data in the User Data, the parties agree that the Client and/or its user(s) is/are the Data Controller and the Supplier is the Data Processor.

2.2 This Schedule 4 sets out the subject matter, duration, nature and purpose of the processing by the Supplier, as well as the types and categories of Personal Data and the obligations and rights of the Client.

2.3 The Supplier shall in respect of such Personal Data:

- (i) process that Personal Data only on the documented written instructions of the Client unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from notifying the Client;
- (ii) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (iv) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the Client has provided appropriate safeguards in relation to the transfer;
- (v) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach, notifications, impact assessments and consultations with supervisory authorities or regulators;
- (vi) notify the Client without undue delay on becoming aware of a Personal Data breach;
- (vii) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Applicable Laws to store the Personal Data; and
- (viii) maintain complete and accurate records and information to demonstrate its compliance with this Schedule 4 and allow for audits by the Client on reasonable notice and immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

3 DATA

3.1 Subject matter and duration of the processing of Personal Data:

- (i) The subject matter and duration of the processing of Personal Data is set out in this Schedule and is further detailed in the Supplier's privacy policy (freely available on request).

3.2 The nature and purpose of the processing of Personal Data:

- (i) Such processing, in accordance with the Client's instructions, as is necessary to provide the services pursuant to the Contract, which may include: the collection of data; recording of data; organisation of data; storage of data; alteration of data; retrieval of data; consultation with regard to data; use of data; disclosure of data to permitted third parties; combining data; and/or erasure of data.

3.3 The types of Client Personal Data to be Processed:

- (i) The Client may submit Personal Data in the course of using the Services, the extent of which is determined and controlled by the Client in its sole discretion, which may include, but is not limited to Personal Data relating to the following: name; personal contact details; professional contact details; IP addresses; cookie data; login credentials; and traffic data including web logs.

3.4 The categories of Data Subject to whom the Client Personal Data relates:

- (i) The Client may submit Personal Data to the Supplier, the extent of which is determined and controlled by the Client in its discretion, and which may include, but is not limited to, Personal Data relating to the following categories of data subjects: the Client's customers, employees, business partners and suppliers.

3.5 The obligations and rights of the Client:

- (i) The obligations and rights of the Client are set out in this Schedule and is further detailed in the Supplier's privacy policy (freely available on request).

MSA: Schedule 5 – Optional Additional Provisions

1 INTRODUCTION

- 1.1 The provisions of this Schedule apply to the extent identified in the Order Form.

2 SUPPLIER DISTRIBUTED SOFTWARE AND SERVICES

- 2.1 In this paragraph, the following words have the following meanings: (a) **"Supplier-Distributed Service Providers"** means the third party 'Supplier-Distributed Service Providers' described in the Order Form; (b) **"Supplier-Distributed Service Terms"** means the additional terms applicable to the re-supply by the Supplier of services by Supplier-Distributed Service Providers as set out at paragraph 4; (c) **"Supplier-Distributed Software Vendors"** means the third party 'Supplier-Distributed Software Vendors' described in the Order Form; (d) **"Supplier-Distributed Vendor Licences"** means software licensing terms in respect of the re-supply by the Supplier of software supplied by Supplier-Distributed Software Vendors as set out at paragraph 3.
- 2.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must agree to Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms; and (b) any termination of the Supplier-Distributed Vendor Licence(s) and/or Supplier-Distributed Service Terms may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract, save that if such termination arises as a result of a breach by the Supplier of paragraph 2.4 below the Supplier shall use all reasonable endeavours to mitigate any adverse impact on the Hosted Services, failing which the Client shall be entitled to terminate this Contract and receive a refund of any prepaid fees covering any period of this Contract that has been shortened due to early termination.
- 2.3 The Client agrees that it will abide by the terms and conditions of Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms.
- 2.4 The Supplier shall ensure that the Supplier-Distributed Software Vendor and/or Supplier-Distributed Service Provider (as applicable) does not terminate the Supplier-Distributed Vendor Licence or and Supplier-Distributed Service Terms (as applicable) as a result of the Supplier's breach of paragraph 2.5 below.
- 2.5 The Supplier shall make payment to Supplier-Distributed Software Vendors and Supplier-Distributed Service Providers in respect of the grant of Supplier-Distributed Vendor Licences and the provision of services under the Supplier-Distributed Service Terms, subject to the Client's: (a) payment to the Supplier of Fees in respect of Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms; and (b) compliance, in full, with the terms and conditions of the Supplier-Distributed Vendor Licences and Supplier-Distributed Service Terms.
- 2.6 The Client shall indemnify and hold harmless the Supplier for all Costs arising from a breach of this paragraph 2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 2.
- 2.7 The parties acknowledge that the Supplier's Fees are in part dependent on the costs imposed on it by third party technology and/or infrastructure providers which are outside of its control. As such, the Supplier shall be entitled to increase the Fees at any time by giving the Client not less than thirty (30) days' written notice if any Supplier-Distributed Software Vendor and/or Supplier-Distributed Service Provider has increased its fees or charges in a manner that increases the costs imposed on the Supplier under this Contract, provided that such increase shall be limited to the additional cost imposed on the Supplier as may be apportioned to this Contract. Both parties will work collaboratively to mitigate the impact of any such third party costs and will endeavour to keep such increases to a minimum.

3 SUPPLIER-DISTRIBUTED VENDOR LICENCES:

- 3.1 [Set out EULA applicable to distributed (i.e. sublicensed) software] [please note: this is not applicable to software that is licensed by the client directly from the vendor / rights holder]

4 SUPPLIER-DISTRIBUTED SERVICE TERMS:

- 4.1 [Set out additional terms applicable to distributed (i.e. resupplied) services.]

5 LOCALLY INSTALLED SOFTWARE

- 5.1 Subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable licence for the term of this Contract to: (a) permit the authorised users to install and use any Supplier Software (that is delivered to the Client for installation on the Client Infrastructure) for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order Form; (b) use the Materials and Deliverables for the duration of the licence granted under this paragraph 5.1 and for the Licensing Purpose. The licence at Clause 2.2 of the Contract shall not apply to Supplier Software, Materials, and/or Deliverables licensed pursuant to this paragraph 5.1.
- 5.2 The parties shall mutually agree in writing the acceptance criteria that will be used to determine whether the Software is Accepted or Rejected (**"Acceptance Criteria"**), and in the absence of such agreement the Acceptance Criteria shall be such criteria recommended by the Supplier that demonstrate that the Software complies with its published specification(s).
- 5.3 The Client shall undertake and complete user acceptance testing in a test environment in accordance with good industry practice and the Supplier's reasonable recommendations promptly (**"Tests"**).
- 5.4 If the Software fails the Tests: (a) the Supplier shall promptly, and in any event within fourteen (14) days, endeavour to remedy such failure (noting that the Supplier will have limited control over such Software that is supplied by third parties) and resubmit the Software for a second cycle of Tests in accordance with paragraph 5.3; or (b) the parties may agree to vary some or all of the Acceptance Criteria in relation to the Software and following which the Supplier shall promptly submit the Software for a second cycle of Tests in accordance with paragraph 5.3.
- 5.5 If the Software fails a second cycle of Tests, the parties agree that the cycle at paragraph 5.4 shall be repeated.
- 5.6 If the Software fails a third cycle of Tests, within thirty (30) days of such failure, the Client shall be entitled to Reject the Software, which: (a) in respect of Tests immediately following (or part of) the Set-Up and Implementation Services, will entitle the Client to terminate this Contract by giving to the Supplier not less than ten (10) days prior written notice, whereupon the Client shall be entitled to receive a refund of all pre-paid Fees under this Contract that relate to Software and/or Set-Up and Implementation Services; or (b) in respect of Tests immediately following (or part of) the installation/implementation of new releases and/or new versions of Software, will entitle the Client to remain on the previous release/version (as applicable).
- 5.7 Software shall be deemed accepted if: (a) the Client signs an acceptance certificate; (b) the Client does not exercise its rejection rights in accordance with paragraph 5.6; (c) the Client puts the Software into live or operational use.
- 5.8 The Client's rights at paragraph 5.6 shall be its exclusive remedies in respect of rejection. In no circumstances shall the Client be entitled to compensation and/or damages (with the exception of the refund(s) set out at paragraph 5.6 (a)).
- 5.9 The Client shall install and/or implement new releases and/or new versions of Software promptly, but prior to live or operational use shall undertake the test cycle set out at paragraphs 5.2 to 5.7 above in respect of such new releases/versions.

MSA: Schedule 5 – Optional Additional Provisions

6 OPEN SOURCE SOFTWARE

- 6.1 In this paragraph, the following words have the following meanings: (a) **"Open Source Licence"** means a licence in respect of the Open Source Software as described in the Order Form; (b) **"Open Source Software"** means the open source software described in the Order Form, including all new releases, new versions, updates and modifications thereto.
- 6.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must enter into Open Source Licences; (b) the Supplier will have no contractual obligations or responsibilities in respect of Open Source Licences and, in particular, will not be providing patches or fixes in respect of the Open Source Software; and (c) any termination of the Open Source Licences may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract.
- 6.3 The Client agrees that it will enter into Open Source Licences and will maintain such Open Source Licences for the duration of this Contract and abide by the terms and conditions of Open Source Licences.
- 6.4 The Supplier warrants at the Effective Date that the provision of Open Source Software as part of the Hosted Services shall not infringe the terms of the Open Source Licences.
- 6.5 In the event that any Open Source Licence is terminated, or in the reasonable opinion of the Client or the Supplier, use of the Open Source Software infringes the Intellectual Property Rights of a third party, save in respect of such termination or reasonable opinion arising as a result of a breach by either party of this paragraph 6, the parties shall use all reasonable endeavours to mitigate any adverse impact to the Hosted Services (which may include the sourcing of alternative software components), provided that if notwithstanding such mitigation the adverse impact to the performance or functionality of the Hosted Services is substantial, the Client shall be entitled to terminate this Contract on thirty (30) days' prior written notice. Mitigation arising under this paragraph shall be deemed an Event of Force Majeure and the provisions of Clause 12.7 shall apply.
- 6.6 The Client shall indemnify and hold harmless the Supplier for all Costs arising from a breach of this paragraph 6, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 6.

7 CLIENT CONTRACTED SOFTWARE AND SERVICES

- 7.1 In this paragraph, the following words have the following meanings: (a) **"Client-Contracted Services Agreements"** means contracts entered into between Client-Contracted Services Providers and the Client; (b) **"Client-Contracted Services Providers"** means the third party 'Client-Contracted Services Providers' described in the Order Form; (c) **"Client-Contracted Software Vendors"** means the third party 'Client-Contracted Software Vendors' described in the Order Form; (d) **"Client-Contracted Vendor Licences"** means software licensing agreements entered into between Client-Contracted Software Vendors and the Client.
- 7.2 The Client acknowledges that: (a) in order to make use of the Hosted Services it must enter into Client-Contracted Vendor Licences and Client-Contracted Services Agreements; and (b) the Supplier will have no contractual obligations or responsibilities in respect of Client-Contracted Vendor Licences and Client-Contracted Services Agreements, subject to paragraph 7.4 below; and (c) any termination of the Client-Contracted Vendor Licence and/or Client-Contracted Services Agreements (other than as a result of a breach by the Supplier of paragraph 7.4 below) may prevent it from making substantial use of the Hosted Services, but shall not entitle it to terminate this Contract and/or receive any refund under this Contract.
- 7.3 The Client agrees that it will enter into Client-Contracted Vendor Licences and Client-Contracted Services Agreements and will maintain such Client-Contracted Vendor Licences and Client-Contracted Services Agreements for the duration of this Contract and abide by the terms and conditions of Client-Contracted Vendor Licences and Client-Contracted Services Agreements.

- 7.4 The Supplier shall ensure that the Client-Contracted Software Vendor and/or Services Provider (as applicable) does not terminate the Client-Contracted Vendor Licence or and Client-Contracted Services Agreements (as applicable) as a result of the Supplier's breach of paragraph 7.5 below.
- 7.5 The Supplier shall make payment to Client-Contracted Software Vendors and Client-Contracted Services Providers in respect of the grant of Client-Contracted Vendor Licences and the provision of services under the Client-Contracted Services Agreements, subject to the Client's: (a) payment to the Supplier of Fees in respect of Client-Contracted Vendor Licences and Client-Contracted Services Agreements; and (b) compliance, in full, with the terms and conditions of the Client-Contracted Vendor Licences and Client-Contracted Services Agreements.
- 7.6 The Client shall indemnify and hold harmless the Supplier for all Costs arising from a breach of this paragraph 7, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this paragraph 7.
- 7.7 The parties acknowledge that the Supplier's Fees are in part dependent on the costs imposed on it by third party technology and/or infrastructure providers which are outside of its control. As such, the Supplier shall be entitled to increase the Fees at any time by giving the Client not less than thirty (30) days' written notice if any Client-Contracted Software Vendor and/or Client-Contracted Service Provider, has increased its fees or charges in a manner that increases the costs imposed on the Supplier under this Contract, provided that such increase shall be limited to the additional cost imposed on the Supplier as may be apportioned to this Contract. Both parties will work collaboratively to mitigate the impact of any such third party costs and will endeavour to keep such increases to a minimum.