



TERMS AND CONDITIONS OF BUSINESS  
MASTER SERVICE AGREEMENT

**DOCUMENT CONTROL**

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## 1. COMMENCEMENT AND DURATION

This agreement (Master Service Agreement/MSA) is entered into between Rycramweb Ltd Registered in England and Wales as Company Number 05565620 and having its registered office at Office 1, Technology House, 9 Newton Place, Glasgow, G3 7PR, Scotland, United Kingdom. (referred to as "the Supplier") and the Client (referred to as "the Client"). These terms and conditions commence once the contract (synonymously the proposal or SOW or Order Form or Quotation) is signed and is for the period determined in the contract. The services supplied shall continue to be supplied until the contract is terminated by either the Supplier where at its discretion may terminate without any written or prior notice or by the Client giving to the other not less than the notice set out in the proposal or 90 days or at the expiry of the services or alternatively the contract is terminated in accordance with termination clause set out in these terms and conditions.

## 2. ACCEPTANCE & APPLICATION OF THE TERMS AND CONDITIONS

- 2.1. Each contract agreed by these parties is governed by (i) these terms and conditions and (ii) the specific terms applicable to the extent that the contract makes reference to the sale of such Goods and/or Services as further detailed in the Service Definition, Proposal, Schedule of Works, Quotation or in these terms and conditions.
- 2.2. These terms shall prevail over any inconsistent terms or conditions contained in, or referred to, in the Client's purchase order, or other Client documentation, or implied by law, trade custom, practice or course of dealing.
- 2.3. For the avoidance of doubt the Supplier Sales and Marketing Documents are not incorporated into and do not form part of the Contract.
- 2.4. The Client acknowledges that these terms and conditions prevail over any of the Clients own standard terms and conditions whether set out on the Clients own standard order form or otherwise. In the event of any conflict between these terms and conditions and the SLA, then the SLA shall prevail to the extent of any conflict. In the event of any conflict between the SLA and any product specific SLA set out in the Product Terms, the product specific SLA in the Product Terms shall prevail over the SLA in relation to that part of the Services.

## 3. CONTRACT FORMATION AND STRUCTURE

- 3.1. Each contract shall be agreed in the following manner:
- 3.2. The Client shall ask the Supplier to provide any or all of the Goods and Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare the Quotation for the requested Goods and/or Services;
- 3.3. Following receipt of the information requested from the Client the Supplier shall, as soon as reasonably practicable either:
  - a. Inform the Client that it declines to provide the requested Goods and/or Services; or
  - b. provide the Client with a quotation listing the requested Goods and/or Services and the applicable Charges; and
  - c. Both parties shall sign the Quotation when it is agreed.
- 3.4. Each Quotation shall constitute a separate Contract between the parties.
- 3.5. In the event the Client purchases any Professional Services, the Supplier shall prepare a draft Statement of Work or Proposal and the Client shall promptly review and provide comments. The Supplier will then prepare the final version of the SOW, taking into account any comments from the Client, and the parties shall sign the SOW/Proposal when agreed. The SOW/Proposal shall form part of the Contract.
- 3.6. In the event the Client purchases any Managed Services, the applicable Service Definition Document referenced in the Quotation shall apply to and form part of the Contract.
- 3.7. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on either party unless in writing and signed by authorised representatives of both parties.
- 3.8. The Contract shall not prevent either Party from entering into similar agreements with third parties, and the Supplier from independently developing, using, selling or licensing materials, products or services that are similar to those provided under the Contract.

## 4. CHARGES AND PAYMENTS

- 4.1. Recurring services must be paid by Direct Debit. Any payments not made by Direct Debit may carry a fixed administration fee of £10 per invoice.
- 4.2. All outstanding sums will be collected by direct debit and offset against the oldest invoices first unless stated otherwise.
- 4.3. All invoices are to be settled by their due date, failing to do so will entitle the Supplier to suspend any further services and access to support.
- 4.4. All Hardware and Software is to be paid for on delivery by cleared funds. If payments are not paid then title of the goods remain with the Supplier until clear funds/payment is received.
- 4.5. Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier on the due date the Supplier is entitled to suspend any service without any reference to the Client until payment has been made in full.
- 4.6. At our discretion, if we cannot recover debt in a timely manner, we will proceed to cease services to mitigate further costs incurred by us. This may require us to cease services that hold data. the Client accepts in full all liability for any data loss and damages incurred.
- 4.7. Time for payment shall be of the essence of the contract.
- 4.8. All sums payable to the Supplier under the contract shall become due immediately on its termination, despite any other provision. This is without prejudice to any Right to claim for interest under the law, or any such right under the contract.
- 4.9. The Supplier may, without prejudice to any other rights it may have, set off any liability of the Client to the Supplier against any liability of the Supplier to the Client.
- 4.10. The Supplier may, without prejudice to any other rights it may have, the Supplier is entitled to refer any outstanding payments to their appointed legal representative for enforcement and if matters progress to this stage, the Supplier is entitled to claim compensation under the Late Payment of Commercial Debt Act at a rate of 8% together with recouping all its fees and disbursement.
- 4.11. If a payment is refused or reversed, the Supplier reserves the right to charge the Client a £25 administration fee each time payment is refused.
- 4.12. All amounts and fees stated or referred to in the contract are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 4.13. A restocking fee of 10% will be applied to all returns or cancellations.

- 4.14. The Supplier reserves the right to change the payment terms and/or invoicing terms, should Customer's credit adversely change or the Customer persistently fails to fulfil its payment obligation within the agreed payment terms.
- 4.15. No payment shall be considered made until the Supplier receives such payment in cleared funds from the Customer.

## 5. PRICE INCREASE

- 5.1. All fees are subject to an annual price increase of 3% or the rate of inflation, whichever is higher, effective on April 1st each year.
- 5.2. Notice of any price increase will be provided at least 30 days prior to taking effect. This notice will be served in accordance with the notice provisions in this agreement or stated on existing invoices.
- 5.3. Any price increases for third-party services will be passed on to the Client accordingly.
- 5.4. The Client has the right to request a detailed explanation of any price increase, including the basis for the calculation of the increase.
- 5.5. In the event of extraordinary economic conditions, the Supplier reserves the right to implement additional price increases. Such increases will be communicated with at least 60 days' notice and will provide a clear rationale for the adjustment.
- 5.6. Price increases will not apply to any services or products for which a fixed price has been agreed upon in writing for a specific period, until the end of that period.
- 5.7. Price increases for services subject to automatic renewal will be applied at the time of renewal.
- 5.8. If there is a price increase during the term of an automatically renewed license or contract, the new pricing will automatically apply without additional notice at the time of renewal.
- 5.9. The Company will endeavour to minimise price increases by seeking cost efficiencies and optimising service delivery.

## 6. DISPUTED INVOICES

- 6.1. The Client shall notify the Supplier within 7 days of the receipt of the invoice specifying reasons for disputing the invoice.
- 6.2. The Supplier will provide such evidence as may be reasonably necessary to verify disputed invoice. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly.
- 6.3. If any part of an invoice is disputed, the undisputed portions of the invoice shall remain payable by the Client in accordance with the agreed payment terms.
- 6.4. If an item on the invoice is disputed, that item will be put on hold while the issue is being resolved. However, the Supplier will continue to pursue and collect payment for the remaining, undisputed portions of the invoice.

## 7. DURATION & RENEWALS

- 7.1. The Agreement shall come into effect on the signature of the Quotation and remain in force for the Term.
- 7.2. On expiry of the Initial Term, subject always to the provisions of this Agreement, without limitation, the following shall automatically renew for successive twelve (12) month periods (each a "Renewal Period") in each case at the applicable cost immediately prior to such renewal unless and until a party gives no less than thirty (90) days written notice to the other party to terminate this Agreement, such thirty (90) days written notice to expire either at the end of the Initial Term or at the end of the relevant Renewal Period:
  - a. this Agreement;
  - b. all third party managed services, including but not exclusively, Microsoft 365, Antivirus, Backup, Encryption, Hosting; Broadband, Telecoms, VoIP, Support.
  - c. hardware, Server, Switch, Router and device warranty;
  - d. Support services contracted by the Supplier;
  - e. Software Licences
- 7.3. Termination of any contracts is the responsibility of the Client.
- 7.4. the Client may terminate the provision of Services under a Contract by giving notice in writing to the Supplier subject to the termination clauses in this agreement.

## 8. SUSPENSION

- 8.1. **Right to Suspend** - The Supplier may suspend all or part of the Services (including but not limited to email, hosting, support, maintenance, telecommunications, broadband, servers, third-party services, and backups) 5 days after issuing a suspension notice via email. This suspension may occur without prejudice to the Supplier's right to terminate the Agreement under the termination clause, in the event that the Client:
  - a. Fails to make payment on any undisputed sum due to the Supplier by the relevant due date, provided that the Client was given 14 days' prior notice to remedy the non-payment;
  - b. Engages in or allows activities that contravene the terms of this Agreement or any proposals related to it;
  - c. Breaches any third-party agreements subject to the third-party vendor clauses, and fails to remedy the breach within 14 days of receiving notice;
  - d. Breaches any other conditions of this Agreement and fails to remedy such breach (where remediable) within 14 days of receiving notice;
  - e. Is reasonably suspected by the Supplier of misusing the Services; or
  - f. Initiates legal proceedings against the Supplier.
- 8.2. **Ongoing Charges During Suspension** - Charges will continue to accrue during the suspension period, and the Client remains liable for all such Charges.
- 8.3. **Outstanding Payments** - The Client must pay all Charges that were due before the suspension or termination, including any Charges for the period during which the Services were suspended. No refunds will be issued, and the Client is liable for any Services provided up to the date of suspension or termination.

- 8.4. **Service Termination Following Suspension** - If the Client fails to remedy the breaches or settle outstanding payments within 5 days from the suspension, the Supplier may permanently decommission the Client's servers and terminate the Services. Any data will be deleted within 30 days thereafter.
- 8.5. **Access Restrictions** - No data, passwords, documentation, or access will be provided or transferred until all disputes are resolved and all outstanding payments are settled.
- 8.6. **Client Responsibility for Data Loss** - The Client accepts responsibility for any data loss resulting from the suspension of Services.
- 8.7. **Continued Liability for Charges** - Suspension of Services does not affect the Client's liability to pay any charges and other amounts owed to the Supplier.

## 9. TERMINATION

- 9.1. Termination of the Agreement can be effected:
- by the Client giving the Supplier not less than 90 days' prior written notice (in accordance with the notice clause) which notice shall where given during the Initial Term, expire on the last day of the Initial Term or where given during a Renewal Period, expire at the end of the relevant Renewal Period;
  - by the Supplier at any time forthwith if the Client commits any material breach of the Agreement including (but not limited to) non-payment of any fees due or a breach of any acceptable use agreements, or this agreement;
  - by the Supplier, in relation to the Agreement or individual products on a Quotation having reached end of life, giving the Client 30 days' prior written notice at its sole discretion for any reason; or
  - by either party upon an application being made to court or an order being made for the appointment of an administrator, the institution of insolvency, receivership, bankruptcy or any other proceedings for the settlement of the other party's debts or the other party suspending or threatening to suspend payment of its debts or is business or upon the making of an arrangement for the benefit of the other party's creditors or upon the dissolution of the other party.
  - At any time by the Supplier by giving the Client not less than 30 days prior written notice (in accordance with the notice clause).
- 9.2. The Supplier reserves the right to invalidate any or all of the Client's Username and Internet Protocol Address issued to the Client following termination of the Agreement and to re-allocate it or them to another client.
- 9.3. Domain name hosting and transfer requests for domain name server records may be submitted in writing with the authorised signature of the domain name owner via the service desk a charge may be made to cover the Supplier's administration costs and domain transfer. Domain name transfers will not be made until the domain has been paid for by the Client such that until this happens domain names remain the property of the Supplier.
- 9.4. Number porting and transfer requests for numbers may be submitted in writing with the authorised signature of the number owner via the service desk a charge may be made to cover the Supplier's administration costs and number transfer. Number transfers will not be made until the number has been paid for by the Client such that until this happens number remain the property of the Supplier.
- 9.5. The Client shall return all equipment cables and literature belonging to the Supplier at the Client's own cost within 5 days of termination of the Agreement and shall ensure that it arrives in good working order otherwise an appropriate fee may be levied by the Supplier.
- 9.6. The Client must settle any and all Invoices within the invoice periods prior to any termination taking effect and release of any information.
- 9.7. During the term of this Agreement and in line with the non-solicitation clauses the Client will not solicit to be hired or hire, as an employee or independent contractor, any individual (i) who is then an employee of the Supplier or was an employee of the Supplier during the previous 24 months.
- 9.8. Subject always to the provisions of this Agreement, the Supplier shall have the right to discontinue, or substitute with an alternative product, individual products within the Services on 60 days prior written notice, provided that any discontinued products are replaced with an alternative product(s) and such alternative product(s) do not adversely impact the Services or the Client's receipt of the Services, such that the new products introduced with the Services provide at least the same (or improved level of) Services to the Client. Any substitution of an existing product for an alternative product where this is for increased cost would need be agreed in writing with the Client prior to taking effect and if the Client, acting reasonably, does not agree to such increase, the Client shall continue to pay the costs payable before the substitution took place but this shall not prevent discontinuation and/or substitution.
- 9.9. The contract shall continue for the term, unless otherwise terminated or suspended as provided for in this clause.
- 9.10. Without prejudice to any other rights or remedies to which the Supplier may be entitled, the Supplier may terminate the contract without liability to the Client if:
- an order is made or a resolution is passed for the winding up of the Client, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the Client; or
  - an order is made for the appointment of an administrator to manage the affairs, business and property of the Client, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Client, or notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of schedule b1 to the insolvency act 1986); or
  - A receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Client, or if any other person takes possession of or sells the Client's assets; or
  - the Client makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
  - the Client takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
  - the Client instigates legal proceedings, either by court or through pre-action stage.
- 9.11. On termination of the contract for any reason:
- The Client shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the Supplier;
  - The Supplier may destroy or otherwise dispose of any of the Client's data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination or expiry of the contract, a written request for the delivery to the Client of the then most recent back-up of the data. The Supplier shall use reasonable commercial efforts to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and other charges

- outstanding at and resulting from termination (whether or not due at the date of termination). the Client shall pay all reasonable expenses incurred by the Supplier in returning or disposing of data; and
- c. The accrued rights of the Client as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.
- d. All Rentals payments accrued due shall remain payable by the Client together with Rental payments for the remainder of the Term of the Agreement.

## 10. RIGHTS ON TERMINATION

- 10.1. On termination of the Agreement the Supplier shall provide the Termination Assistance Services in accordance with the reasonable instructions of the Client. Except as otherwise set forth in the Agreement, the Termination Assistance Services will be provided at the then applicable level of charges for the Services.
- 10.2. Termination of the Agreement shall not affect any pre-existing liability of the Client or affect any right of the Supplier to recover damages or pursue any other remedy in respect of any breach of the Agreement by the Client.
- 10.3. On termination of the Agreement the right to the use of the Internet Protocol Address allocated by the Supplier shall revert to the Supplier. In the event of termination of the Agreement by the Supplier due to breach of the Conditions by the Client, the Supplier shall be entitled to the balance of all payments which would but for such termination have accrued up to the earliest date upon which the Agreement could have been terminated by the Client in accordance with the Conditions.
- 10.4. Unless otherwise agreed by the Supplier in writing, Services will be permanently decommissioned 7 days after the date of termination, in which case data will be permanently deleted within 30 days thereafter.

## 11. RELEASE OF INFORMATION

- 11.1. The Supplier shall not be required to release any domain name, number, services, password, access, hosting, backup, broadband, data and anything else it holds to which the Client holds rights and may refuse to do so until the Agreement has been validly terminated and the Client has complied with all of its obligations including (but not limited to) the payment of all sums due to the Supplier and remains the property of the Supplier until all sums due have been received.
- 11.2. Upon termination of the contract, the Supplier will release the minimum required information necessary for the transition to a new IT provider. This information will include, but is not limited to, data, passwords, documentation, and access details.
- 11.3. The Supplier reserves the right to charge the Client for any offboarding and information release services. These charges will be based on the time and resources required to facilitate the transition and will be provided to the Client in advance.
- 11.4. All outstanding payments, including those for offboarding and information release services, must be settled before any information is disclosed or transferred to the new provider.
- 11.5. The Supplier will work in good faith to ensure a smooth and efficient transition process, but will only provide the minimum necessary information required to facilitate the transition.
- 11.6. Any additional services or information requested by the Client beyond the minimum required will be subject to additional charges, which will be agreed upon prior to the provision of such services.

## 12. DISPUTE RESOLUTION

- 12.1. The parties shall attempt, in good faith, to resolve any dispute promptly by negotiation which shall be conducted as follows:
- 12.2. The dispute shall be referred, by either party, first to the Client or Supplier Representative (as applicable) for resolution;
- 12.3. If the dispute cannot be resolved within fourteen (14) days after the dispute has been referred to the manager then either party may give notice to the other party in writing ("Dispute Notice") that a dispute has arisen and could not be resolved by the managers; and
- 12.4. Within seven (7) Working Days of the date of the Dispute Notice, each Party shall refer the dispute to a company director for resolution.
- 12.5. If the Supplier directors are unable, or fail, to resolve the dispute within 21 Working Days of the date of the Dispute Notice, or within 14 Working Days of the reference to the Supplier directors the parties may attempt to resolve the dispute by mediation.
- 12.6. If within 30 days of the Dispute Notice the parties have failed to agree on a resolution, either party may refer any dispute for mediation pursuant to this clause but neither shall be a condition precedent to the commencement of any court proceedings, and either party may issue and commence court proceedings prior to or contemporaneously with the commencement of mediation. The following provisions shall apply to any such reference to mediation:
  - 12.6.1. The reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
  - 12.6.2. Both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR Model Mediation Agreement for time being in force; and
  - 12.6.3. To the extent not provided for by such agreement of the MMP:
    - a. The mediation shall commence by either Party serving on the other written notice setting out, in summary form the issues in dispute and calling on that other Party to agree the appointment of a mediator; and
    - b. The mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the parties or, in default of agreement, appointed by CEDR.
- 12.7. If and to the extent that the Parties do not resolve any dispute or any issue in the course of any mediation, either party may commence or continue court proceedings in respect of such unresolved dispute.
- 12.8. Nothing in this clause shall prevent either party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.



## 13. SUPPLY AND DELIVERY

- 13.1. In accordance with this agreement, the Supplier will provide, and the Client will accept, the Products and/or Services listed on the proposal.
- 13.2. Any delivery date provided by the Supplier is an estimate only. Under no circumstances shall time be considered of the essence of this Agreement. The Supplier reserves the right to make deliveries in instalments.
- 13.3. Delivery will be made during normal working hours. If the Client requires delivery outside these hours, an additional charge will apply, unless otherwise agreed upon.
- 13.4. The Client is required to purchase hardware and software from the Supplier for the minimum duration of the contract.
- 13.5. Any hardware and software not purchased from the Supplier may not be supported.
- 13.6. Shipping charges will apply to all items dispatched by the Supplier.

## 14. SUPPORT

### 14.1. Software Support

- 14.1.1. Any application not installed by the Supplier will be diagnosed and reported to the Client, who may then need to follow this up with the software vendor directly.
- 14.1.2. Support for software provided by third party/parties may be supported to an installation degree.
- 14.1.3. Support for hardware/software provided by third party/parties will be charged at the standard agreed rate unless otherwise agreed.
- 14.1.4. All ad-hoc requests will carry a lower priority than supported items.

### 14.2. Hardware Support

- 14.2.1. Support is provided to the Client on a "best effort" basis, and may include suggestions for short term "work around" solutions, and/or the provision of modifications to the software/hardware or documentation as deemed appropriate by the Supplier.
- 14.2.2. Support for hardware provided by third party/parties may be supported to the extent of installation.
- 14.2.3. Support for hardware provided by third party/parties will be charged at the standard agreed rate unless otherwise agreed.

### 14.3. User Support

- 14.3.1. User support includes 1 PC per User unless otherwise agreed.
- 14.3.2. User Support includes supporting the user to the extent of ensuring all agreed services are functioning and provisioned. This does not include any training.
- 14.3.3. A User who a full Microsoft 365 Licence is assigned to is assumed to be a valid and chargeable user.
- 14.3.4. We will calculate the total number of valid users each month based on the number of active Microsoft 365 Licences and apply a user support charge.
- 14.3.5. The Client is responsible to advise the Supplier of any offboarded users and to remove any licences. The Supplier is not responsible for any licence costs incurred due to failure of informing and offboarding any users.
- 14.3.6. Support for users does not extend to mobile devices unless agreed to.
- 14.3.7. User Support will be provided remotely unless agreed. Any call out required will be covered by the User Support.

### 14.4. Raising a Support Request

Support is available through the means outlined below:

- a. Telephone: 03303 337 337
- b. Email: support@creative-n.com
- c. Web: www.creative-n.com

## 15. SUPPORT SLAS

- 15.1. Support priority will be assigned by the Supplier. Each priority carries a different response time. The priority levels are as detailed on our SLA listed on our website.
- 15.2. Our Support Methodology and SLA can be accessed here: [www.creative-n.com/sla](http://www.creative-n.com/sla).
- 15.3. Support will be prioritised using the ITIL framework. We will determine the Urgency and Impact of any issues to determine the priority.
- 15.4. SLAs set out on our website are a company policy and are open to review and ratification as per the needs of the Supplier. They do not form part of the contract.
- 15.5. the Supplier is not bound to meet the SLAs by means of contract and are there to ensure a quality of service and delivered on best endeavour unless a specific SLA contract is entered into.

## 16. APPROVALS AND AUTHORITIES

- 16.1. Support may be requested by end users if this is the agreed service.
- 16.2. We will use an Approvers Form to determine the necessary points of contact.
- 16.3. Changes will only be accepted and approved from the nominated support contact listed in approvers form.
- 16.4. Any suspicious requested from the nominated support contact may be referred to the Supplier owner for approval prior to submission.
- 16.5. Support calls from anyone not listed in the approvers form may be refused and redirected to a listed support contact.
- 16.6. Company directors listed on companies house will be automatically approved as Final Authorities.
- 16.7. Where a contact cannot be determined, we will refer to the Supplier directors listed on companies house.
- 16.8. Where a director cannot be established we will refer to the Person Of Significant Control (PSC).
- 16.9. Where a PSC cannot be established we will refer to the majority Shareholder.
- 16.10. Where a majority shareholder cannot be established and there is more than 1 shareholder we will take instruction from either of the shareholders.
- 16.11. We will prioritize a named contact on the approvers form alongside the decision of the above establishment of order.
- 16.12. Where there is no listing on companies house we will refer to the signee of the contract.
- 16.13. The Supplier reserves the right to verify the identity and authorization of any individual requesting support, including requesting additional information or documentation as necessary.
- 16.14. Changes to support contacts or approvals must be communicated in writing and acknowledged by both parties to be considered valid.



- 16.15. In the event of a dispute regarding support requests or approvals, both parties agree to engage in good faith negotiations to resolve the issue promptly.
- 16.16. The Supplier may periodically review and update the Approvers Form to ensure accuracy and relevance. Any updates will be communicated to the Client in a timely manner.
- 16.17. Support requests that fall outside the scope of agreed-upon services may be subject to additional charges or require a separate agreement.
- 16.18. The Client agrees to provide timely access and cooperation necessary for the Supplier to fulfil support requests effectively.
- 16.19. The Supplier will not be held responsible for any disruption or information released inadvertently during the identification of the rightful final authority.

## 17. HOURS OF OPERATIONS

### 17.1. Core Business Hours

Advice, assistance and support are available during normal working hours (08:30 to 18:00) Monday to Friday excluding public and bank holidays.

### 17.2. Out of Hours

- 17.2.1. Out of Hours are 18:01 to 08:29 AM Monday to Friday and all of Saturday and Sunday.
- 17.2.2. Public holidays are deemed as Out of Hours.
- 17.2.3. Out of Hours will be chargeable by default at our standard out of hours rates.

## 18. SITE VISITS

- 18.1. Travel time to and from the Client's site shall be included within the duration of the site visit. Any additional travel expenses incurred, such as parking fees or toll charges, shall be borne by the Client and reimbursed to the Supplier upon presentation of valid receipts.
- 18.2. Site visits shall be scheduled in advance between the Client and the Supplier to ensure mutual convenience and availability. Changes to the scheduled site visit time or date require prior notification and agreement between the parties.
- 18.3. The scope of work to be carried out during the site visit shall be defined and agreed upon by both parties prior to the visit. Any deviation from the agreed scope may result in additional charges, subject to mutual agreement.
- 18.4. Site visits conducted outside of regular business hours or on weekends/holidays may be subject to overtime rates, as agreed upon in writing between the Client and the Supplier.
- 18.5. Emergency site visits required for critical issues shall be promptly attended to, with any associated charges communicated and approved by the Client.
- 18.6. The Client agrees to provide full cooperation and assistance to the Supplier's personnel during site visits, including access to necessary equipment, facilities, and information required to complete the work effectively.
- 18.7. The Supplier shall not be liable for any delays or failures in performing site visits caused by factors beyond their control, including but not limited to traffic conditions, adverse weather, or access restrictions at the Client's site.
- 18.8. Either party may terminate or reschedule a planned site visit with reasonable notice and mutual agreement. Any cancellation fees or charges incurred due to late cancellation shall be borne by the party responsible for the cancellation, as specified in the agreement.
- 18.9. All site visits required for support and maintenance for anything outside the signed proposal; are additionally chargeable unless agreed.
- 18.10. Any additional work carried out whilst onsite will be chargeable this is regardless of the engineer visiting for a supported item.
- 18.11. Sign-off is the approval of installation or services or hardware to a satisfactory standard by the Supplier accepted by the Client.

## 19. INSTALLATION

- 19.1. Hardware and Software may be configured prior to installation offsite.
- 19.2. Hardware and Software may be configured prior to installation remotely.
- 19.3. Installation includes any hardware/software provided by the Supplier.
- 19.4. Installation of hardware/software provided by third party/parties will be installed if required and charged at the agreed rate.
- 19.5. Installation and commissioning will be done on a "best effort" basis and may include suggestions for short term "work around" solutions and/or the provision of modifications to the software/hardware or documentation as deemed appropriate by the Supplier.
- 19.6. Any alterations or temporary solutions will be rectified to a satisfactory standard.
- 19.7. Installation will be completed to standard to the pre-agreed installation period.

## 20. INSTALLATION SIGN OFF

- 20.1. Installation Sign-off is the approval of installation to a satisfactory standard by the Supplier accepted by the Client.
- 20.2. Installation Sign-off signifies the completion of the installation process to the satisfaction of both parties, with the Supplier certifying that the installed hardware and software meet the agreed specifications and performance standards.
- 20.3. the Client acknowledges that by signing the Installation Sign-off, they accept responsibility for reviewing the installation and ensuring that it meets their operational requirements as specified in the Agreement.
- 20.4. In the event that the Client identifies any deficiencies or issues during the installation process, they shall notify the Supplier promptly to facilitate timely resolution. The Supplier agrees to address any such deficiencies in accordance with the agreed terms and conditions.
- 20.5. Upon completion of the installation and sign-off process, the Supplier shall provide the Client with comprehensive documentation, including but not limited to system configurations, user manuals, and any relevant training materials, to support the continued operation and maintenance of the installed systems.
- 20.6. The signing of the Installation Sign-off by both parties signifies mutual agreement that the installation has been completed satisfactorily and in accordance with the terms of the Agreement. Any subsequent modifications or enhancements to the installed systems shall be subject to separate agreements or change control procedures.
- 20.7. In the event of any disputes regarding the adequacy or completeness of the installation, both parties agree to engage in good faith discussions to resolve the issues amicably. If necessary, dispute resolution mechanisms outlined in the Agreement shall be invoked to reach a satisfactory resolution.
- 20.8. Both parties shall retain copies of the signed Installation Sign-off document for their records, to serve as evidence of the completion and acceptance of the installation in accordance with the Agreement.

## 21. SCOPE CREEP

- 21.1. The scope of work ("Scope") under this Agreement is defined in the statement of work/proposal ("SOW").
- 21.2. Any changes to the Scope requested by either party shall be documented in writing and may constitute additional work. The Supplier shall evaluate the impact of the Additional Work on the time, resources, and costs of the project.
- 21.3. the Client agrees to pay for any Additional Work requested by them or necessitated by factors outside the control of the Supplier, including but not limited to changes in project objectives, schedule, or technical requirements ("Scope Creep"). the Supplier shall provide a written estimate for the Additional Work, including any adjustments to project timelines or costs, for the Client's approval before proceeding with the Additional Work.
- 21.4. In the event of Scope Creep, the Supplier reserves the right to adjust the project schedule and costs as necessary to accommodate the Additional Work. the Client agrees to pay for any Additional Work as invoiced by the Supplier.
- 21.5. The Supplier shall not be responsible for any delays or deficiencies in performance arising out of or related to Scope Creep unless expressly agreed upon in writing by both parties.
- 21.6. This clause shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and legal representatives.

## 22. MANUFACTURER WARRANTIES

- 22.1. The Supplier shall facilitate and manage all warranty requests and claims for hardware covered under the proposal, ensuring compliance with the respective manufacturer's warranty terms and conditions.
- 22.2. The warranty period for each hardware item shall be specified in the proposal, and the Supplier shall ensure that any warranty claims are submitted within the applicable warranty period to maximise coverage.
- 22.3. Upon identification of a warranty issue, the Client shall promptly notify the Supplier and provide all necessary documentation and information required to process the warranty claim, including proof of purchase and serial numbers.
- 22.4. The Supplier shall coordinate with the manufacturer or authorised service providers to facilitate warranty repair or replacement of defective hardware items. The client shall bear the costs associated with shipping, handling, and repair services covered under the manufacturer's warranty.
- 22.5. The warranty coverage provided by the manufacturer may exclude certain types of damage or defects, including but not limited to accidental damage, misuse, unauthorised modifications, or normal wear and tear. The Supplier shall not be responsible for warranty claims arising from such exclusions.
- 22.6. Any repairs or replacements required for hardware items not covered under the manufacturer's warranty, or for damages excluded from warranty coverage, shall be subject to separate agreements and charges as outlined in the Agreement.
- 22.7. The Supplier shall keep the Client informed of the status of warranty claims and provide regular updates on the progress of repairs or replacements, ensuring transparency and accountability throughout the warranty process.
- 22.8. In no event shall the Supplier be liable for any consequential damages or losses arising from warranty claims or repairs.

## 23. MAINTENANCE

- 23.1. subject to a valid maintenance contract for each service the following maintenance terms will apply.
- 23.2. **Server Maintenance**
  - 23.2.1. Backups will be checked on a regular basis.
  - 23.2.2. Updates and Service Packs will be installed on a monthly basis.
  - 23.2.3. Any critical updates will be applied immediately.
  - 23.2.4. the Supplier will qualify the updates prior to installation.
- 23.3. **Client Maintenance**
  - 23.3.1. "Client" refers to any device including Laptops, Workstations, Thin Clients and any other device that can be categorised as a Client.
  - 23.3.2. Updates will be applied to Clients as and when necessary, normally during routine support calls.
  - 23.3.3. Any critical updates will be applied immediately.
  - 23.3.4. Client hardware will be repaired if faulty under manufacturer warranty.
  - 23.3.5. If there is no warranty, parts will be chargeable.
  - 23.3.6. Parts will be sourced by the Supplier unless the Client requests otherwise.
- 23.4. **General Maintenance**
  - 23.4.1. Firmware and Software updates will be undertaken to resolve issues.
  - 23.4.2. Any critical updates will be applied immediately.
  - 23.4.3. "Devices" including Routers, Switches, Access Points, Firewalls and Network Storage Devices, this is not exhaustive.
  - 23.4.4. the Supplier will not be liable for any downtime caused as a result of updates to Servers, Clients or any other equipment or services.
  - 23.4.5. Any hardware or software not listed in Schedule A may be subject to additional charges if any maintenance or support is carried out.

## 24. MANAGED SERVICES

### 24.1. Backup

- 24.1.1. The minimum Backup 10GB.
- 24.1.2. Backups will be charged in 5GB increments.
- 24.1.3. The default unstated Backup Duration is 30 days.
- 24.1.4. Backups will be stored in a location agreed with the Client, this could be within the UK or offshore.
- 24.1.5. If a file is backed-up and it is a corrupted or damaged file, when that file is restored the Client will receive an identically corrupt or erroneous file.
- 24.1.6. It is the Clients responsibility to determine RTO and RPO.

### 24.2. Microsoft 365

- 24.2.1. The Supplier will provide a hosted exchange solution from a third party.
- 24.2.2. The Supplier will not be responsible for the storage, backup and security of hosted exchange service.
- 24.2.3. The Supplier will upon written request from the Client disclose the location and details of the third party.
- 24.2.4. Microsoft 365 subscriptions will be renewed per the terms of Microsoft and will dictate the term of the contract.

### 24.3. Telecoms, VOIP and Broadband

- 24.3.1. The Supplier will provide communications services from a third party.
- 24.3.2. The elected third party will be responsible for the provision of any services.
- 24.3.3. The Supplier will upon written request from the Client disclose the location and details of the third party used for all Telecoms services.
- 24.3.4. Number porting costs will be passed on to the Client.
- 24.3.5. Number Porting may carry risk of downtime and outages,

### 24.4. Hosting

- 24.4.1. Hosting includes any Website, Server or Application hosted on the Suppliers network, equipment or on any of the Suppliers third party networks

### 24.5. Mobile Device Management

- 24.5.1. Mobile Device Management services will be provided by means of a third party who will be responsible for the provision of the service.
- 24.5.2. The Supplier will not be responsible for the storage, backup and security of Mobile Device Management.
- 24.5.3. Mobile Device Management refers to a third party service and not the support of a Mobile Device.

### 24.6. Security

- 24.6.1. All security products including but not limited to Anti-Virus, Encryption, Mail Security, Web Security and Office 365 will be sourced and provided from a third party by means of software or third-party service referred to as a Managed Service.

### 24.7. General

- 24.7.1. The Supplier will not be responsible for the storage, backup and security of hosted exchange service.
- 24.7.2. The Supplier will take all necessary precautions and due diligence when selecting an appropriate third party for any services.
- 24.7.3. The Supplier will provide best endeavours to maintain an uptime of 98% for any services hosted by the Supplier directly.
- 24.7.4. The Supplier will pass on the committed contract terms to the Client for any third party contracted services.

### 24.8. Declined Services

- 24.8.1. All services not contracted are deemed to be declined, for example, if you have not taken backup, this will be a declined service.
- 24.8.2. It is the Clients responsibility to ensure they have adequate security and protection for all services.

## 25. THIRD PARTY SERVICES & SOFTWARE

- 25.1. In the event that the Supplier incorporates or utilises third-party software or services ("Third Party Software") as part of the Services provided under this Agreement, the Service Level Agreements ("SLA's) and terms and conditions governing the use of such Third Party Software or Service shall prevail over any conflicting provisions in this Agreement to the extent necessary.
- 25.2. The Client acknowledges that the use of Third Party Software or Service may be subject to SLA's and terms and conditions set forth by the respective third-party licensors or providers ("Third Party Terms").
- 25.3. The Client agrees to comply with all Third Party Terms applicable to the use of Third Party Software or Service. The Supplier shall provide the Client with reasonable notice of any applicable Third Party Terms.
- 25.4. To the extent that any provision in this Agreement conflicts with any Third Party Terms, the Third Party Terms shall govern with respect to the use of the relevant Third Party Software or Service.
- 25.5. The Supplier shall not be liable for any failure or non-performance caused by the Third Party Software or Service or for any losses or damages arising from the Client's failure to comply with Third Party Terms.
- 25.6. Indemnification: the Client agrees to indemnify, defend, and hold harmless the Supplier from and against any claims, losses, damages, liabilities, costs, and expenses (including reasonable legal fees) arising out of or related to the Client's use of Third Party Software or Service in violation of Third Party Terms.
- 25.7. The Supplier reserves the right to modify this Agreement to reflect changes in Third Party Terms upon providing reasonable notice to the Client.
- 25.8. We provide third-party services "as-is" and make no warranties, representations, or guarantees regarding their performance, reliability, or suitability for your purposes.
- 25.9. We shall not be held liable for any loss, damage, or disruption caused by:
  - 25.9.1. Failures, errors, or downtime of third-party services.
  - 25.9.2. Service Provider's negligence or breach of their terms.
  - 25.9.3. Your failure to comply with applicable terms or misuse of the services.
- 25.10. Our total liability under these Terms is limited to the fees paid by you to us for the affected services in the three months preceding the incident giving rise to the claim.
- 25.11. By agreeing to these Terms, you also agree to comply with the terms and conditions of the relevant Service Providers.
- 25.12. It is your responsibility to review and understand the terms and conditions of the Service Providers before using their services. Copies of these terms can be provided upon request or are typically available on the respective Service Provider's website.
- 25.13. Any breach of the Service Providers' terms and conditions by you may result in suspension or termination of the services provided.

- 25.14. We act as a reseller or intermediary for many of the services we offer. The primary terms and conditions of the third-party providers ("Service Providers") will apply to your use of their services.
- 25.15. You acknowledge that we do not own or operate these third-party services, and we do not guarantee their performance, availability, or suitability for your needs.

## 26. TRANSFERS AND EXPORTS

- 26.1. An export fee of £15 per domain or number will be chargeable for the export from the Supplier's database or platform.
- 26.2. the Supplier shall not be liable for any damages, losses, or claims arising from the use of the exported domains or numbers or client records by the Client or any third party.
- 26.3. The export fee will be payable prior to any export.
- 26.4. The Export Fee shall be invoiced by the Supplier and is due and payable within 30 days of the invoice date.
- 26.5. The Export Fee applies to each individual domain or number exported by the Client from the Supplier's system, database, or platform.

### 26.6. Number Export

- 26.6.1. By requesting the export of numbers, the Client confirms that they have the necessary authority and permissions to export such data from the Supplier's system.
- 26.6.2. The exported numbers or client records shall be used solely for the purposes agreed upon between the parties and in compliance with applicable laws and regulations.

### 26.7. Domain Export

- 26.7.1. By requesting the export of domains, the Client confirms that they have the necessary authority and permissions to export such data from the Supplier's system.
- 26.7.2. The exported domains or client records shall be used solely for the purposes agreed upon between the parties and in compliance with applicable laws and regulations.

## 27. SHARED INTERNET

### 27.1. Fair Usage Policy

- 27.1.1. Services are subject to a Fair Usage Policy.
- 27.1.2. The Supplier will manage and monitor the available bandwidth to the Client.
- 27.1.3. The available bandwidth on the network is contended across multiple clients.
- 27.1.4. To ensure quality of service, fair usage and availability for all our clients we may deploy traffic management tools.
- 27.1.5. We classify all traffic into two categories:
  - a. Typical for business: Traffic that is typical for business is prioritised on our network. This includes but is not limited to making and receiving VOIP calls, sending and receiving emails.
  - b. Non-Typical for business: Traffic that is non-typical for business is de-prioritised on our networks. This includes but is not limited to streaming music and video, using peer to peer networks and general web browsing.

### 27.2. Throttling of excessive-Use Circuits

- 27.2.1. Circuits classified as having Average to High usage (<500GB of Data per month) are rarely throttled on our network unless the traffic demand is made over very short intervals of time.
- 27.2.2. Circuits classified as having excessive usage may be throttled or re-rated depending on the situation and the bandwidth overhead available at the time.
- 27.2.3. If the Supplier determines that excessive bandwidth, disk space utilisation or High CPU loads are adversely affecting the Suppliers ability to provide service to other users, the Supplier may take immediate action.
- 27.2.4. We reserve the right if required to terminate any broadband circuit on the network that is being used for any purpose other than what would be expected from a typical business.

### 27.3. Client Responsibilities

- 27.3.1. the Client is responsible for its actions on our network and system they access through their Service.
- 27.3.2. If the Client acts recklessly or irresponsibly in using their service or their actions endanger any person on the integrity or security of our network, systems or equipment, your access may be restricted, suspended, or terminated without prior notice.

### 27.4. Consequences of Unacceptable Use

- 27.4.1. If the Supplier believes that the policy has been breached or the integrity of the network and/or the performance of other users is at risk, then the Supplier reserves the right to immediately suspend or terminate the Clients access to the Services.

### 27.5. Administration of Policy

- 27.5.1. The Client understands that the administration of this policy requires the exercise of discretion and judgment by the Supplier.
- 27.5.2. The Supplier agrees to exercise good faith in its administration of this policy and in making determinations under the policy.

### 27.6. Support

- 27.6.1. All issues must be reported to our service desk.
- 27.6.2. Our engineers will first carry remote network diagnostics to identify the problem.
- 27.6.3. The Client is responsible for Client Premise Equipment (CPE) and we will not test this.
- 27.6.4. The Supplier is only responsible to ensure service is delivered to the data port.
- 27.6.5. If the Client requests a site visit, this will be chargeable at our standard Ad Hoc rates.

## 28. HARDWARE RENTAL

### 28.1. General

- 28.1.1. The Equipment shall at all times remain the property of the Supplier. the Client shall not part with possession of the Equipment nor dispose of, charge, pledge or underlet the same, nor attempt to do so.
- 28.1.2. the Client shall keep the Equipment at the address shown on the Agreement and can only remove it with the prior written consent of the Supplier.
- 28.1.3. The Client may use mobile equipment away from the address shown on the agreement. This is exclusively for equipment design to do so,
- 28.1.4. The Supplier reserves the right to vary the Rental Terms after the expiry of the agreement by giving one month's written notice.
- 28.1.5. Rental is not a right to Hire-Purchase and gives no right to buy the Equipment. By mutual consent, the Client has an option to purchase any Equipment under this Agreement, considering a proportion of the rental paid.
- 28.1.6. If the Client is using video, audio recording Equipment, downloading any files, software, computer hacking and / or performing any illegal actions using any Equipment owned by the Supplier. the Client should note that the Supplier will not be held responsible for any breach of copyright or performing rights and / or infringement of any laws, whether governed by the United Kingdom and / or Worldwide. Therefore the Client should make enquiries to ensure that their use of such Equipment is legally compliant within the United Kingdom and /or Worldwide.
- 28.1.7. Hardware Rentals do not include any software or licences unless specified on the agreement.
- 28.1.8. Rental Equipment which is directly connected to a telephone line or lines accept all responsibility for its connection and must make sure they have the permission of their telecommunications provider for its connection and pay any costs if necessary charged by them with regard to its connection.
- 28.1.9. The Supplier is not responsible for any software used on its computer Equipment, (unless agreed by both parties). All Support is chargeable if the Client reports faulty Equipment that is caused by software problems.
- 28.1.10. Rental of Hardware does not include software support and access to any other services from the Supplier.
- 28.1.11. This is not a Hire-Purchase Agreement.

### 28.2. Client Obligation – Rental

- 28.2.1. The Client shall not suffer the Equipment to be taken by way of distress or execution and shall indemnify the Supplier against any loss damage costs and expenses which the Supplier may incur for the purpose of preserving the Equipment from such distress or execution or of recovering it.
- 28.2.2. The Client and / or any associated 3rd party undertaking work for the Client is not to deface, remove or otherwise interfere with the markings on the Equipment showing the Supplier's ownership.
- 28.2.3. The Client and / or any associated 3rd party undertaking work for the Client shall use the Equipment in a proper manner and not to attempt to interfere or tamper with the Equipment except to make normal adjustments. The Supplier reserves the right to charge for callouts due to incorrect operation.
- 28.2.4. The Client is responsible for the cost of repairs needed due to misuse, whether caused by the Client and / or any 3rd party undertaking work for the Client. The costs of any repairs due to misuse shall be paid by the Client to the Supplier.
- 28.2.5. The Client shall allow the Supplier and his agents to enter the address at which the Equipment is installed to inspect and if necessary to repair or replace the Equipment.
- 28.2.6. The Client is to notify the Supplier immediately if the Equipment suffers any damage or fails to operate properly. The Supplier is not responsible for faulty tape products or other media that might be used.

### 28.3. Supplier Obligation – Rental

- 28.3.1. The Supplier agrees to repair the Equipment in the event of failure. If this is not possible it will be replaced by similar or better Equipment within seven days which will be subject to the terms of this Agreement.
- 28.3.2. The Supplier is not responsible for any loss of use of the Equipment due to failure.
- 28.3.3. The Supplier will be liable for negligently caused death or personal injury but will not be liable for any other injury or damage to persons or property or for any other losses whatsoever arising out of installation, possession or use of the Equipment or of its non-performance or otherwise in connection with this Agreement.
- 28.3.4. The Supplier will exercise due care in selecting its staff and agents but will not be responsible for any act or default of such staff or agents which could not have been foreseen and prevented by the exercise of reasonable care by the Supplier.

### 28.4. Insurance – Rental

- 28.4.1. The Client is liable for any loss or damage of or to the equipment and is therefore strongly advised to ensure the equipment is insured against any such loss or damage for the value specified within the signed Agreement.
- 28.4.2. The Client agrees to notify the Supplier immediately of any loss by theft, damage or otherwise of the Equipment.
- 28.4.3. The Client agrees to notify the Insurance Company on any claim of the interest held on any Equipment by the Supplier allowing, if possible, direct settlement of the value of the Equipment between the Insurance Company and the Supplier. Until the Supplier has received a proper reimbursement, the Client shall continue to pay the Rental payments due. Any Equipment replaced prior to this will be subject to a new Agreement.

### 28.5. Return of Equipment

- 28.5.1. When this Agreement comes or is brought to an end the Client shall at once return the Equipment to the Supplier at the Suppliers Address and shall without prejudice to his duty to return the Equipment allow and assist the Supplier's staff or agents to enter upon any property in the Clients possession or control and shall give the Supplier all information in his possession to enable the Supplier to retake the Equipment.
- 28.5.2. It is declared and agreed that if the Client fails to return or allow the Supplier to retake the Equipment then the Rental payments due for this time from the end of the Agreement and any costs incurred in the Equipment's recovery shall be paid by the Client.
- 28.5.3. The Client shall cover all costs the return the equipment except where it is agreed in writing for the Supplier to collect.



## 29. THE SUPPLIERS OBLIGATIONS

- 29.1. The Supplier undertakes that the services will be performed with all reasonable skill and care.
- 29.2. The Supplier will provide the Client with the necessary means to enable it to utilise the services.
- 29.3. The Client agrees and accepts that the Supplier requires access to and use of the internet and that the internet is an unregulated public network over which the Supplier exerts no control.
- 29.4. The Supplier will prioritise all tickets raised for supported items over non-supported items.
- 29.5. The Supplier will prioritise all tickets raised for clients on contracts over clients who use the Suppliers services on an ad-hoc basis.
- 29.6. The Supplier undertakes that the Services will be performed with all reasonable skill and care and in accordance with Good Industry Practice and the terms and that the Services will be provided substantially in accordance with the Contract.
- 29.7. If the Services do not conform with the undertaking the Supplier shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.
- 29.8. The Supplier shall use reasonable endeavours to meet any delivery/performance dates but any such dates shall be estimates only and time for delivery/performance by the Supplier shall not be of the essence of the Contract.
- 29.9. The Supplier shall observe all reasonable health and safety and security requirements that apply at any of the Client's premises and that have been communicated to it within a reasonable time prior to the commencement of the Services, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 29.10. The Supplier shall remain throughout the term of the Contract compliant (and certified by an independent, reputable and competent certification body to be compliant) required as part of the proposal.
- 29.11. The Supplier's personnel and sub-contractors (if any) used by the Supplier in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform.
- 29.12. In performing its obligations under the Contract, the Supplier shall comply with all applicable laws.

## 30. THE CLIENTS OBLIGATIONS

- 30.1. The Client shall provide the Supplier all necessary co-operation in relation to the contract and these terms; and all necessary access to such information as may be required by the Supplier in order to render the service.
- 30.2. The Client shall comply with all applicable laws and regulations with respect to its activities under the contract.
- 30.3. Co-operate with the Supplier in all matters relating to the Contract;
- 30.4. The Client is ultimately responsible for its equipment, firewall, password and other security measures to protect its systems, data and application from unwanted intrusion whether over the internet or otherwise.
- 30.5. The Client and its users of our services will act and behave professionally at all times. Abuse of our colleagues or services will not be tolerated under any circumstance and the Supplier hold the right to cease to service any abusive users.
- 30.6. The Suppliers colleagues will terminate any abusive calls, emails and communication and report this to the Client.
- 30.7. Provide to the Supplier, in a timely manner all necessary access (whether physical or remote as solely determined by the Supplier) to Client's premises, data and other facilities as reasonably required by the Supplier including any such access as is specified in the Contract.
- 30.8. Provide to the Supplier in a timely manner all documents, information, items and materials in any form required under the Contract or otherwise reasonably required by the Supplier in connection with the Contract and ensure that they are accurate and complete.
- 30.9. Provide such personnel assistance as may be reasonably requested by the Supplier from time to time;
- 30.10. Allow the Supplier or its designated subcontractors, Admin on Behalf of (AOBO) or admin access (at either owner or contributor level (as applicable)) or such other access as the Supplier requires to the Client's relevant servers and networking systems for the duration of the Contract.
- 30.11. Where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite, Power Platform, Office 365 or Dynamics 365), the Supplier will be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR) and Digital Partner of Record (DPOR) and/or Partner Admin Link (PAL) and/or Transacting Partner of Record (TPOR) and/or Admin on Behalf of (AOBO) for the duration of the Contract unless otherwise agreed between the Parties. the Client acknowledges that the Charges may reflect a concession that is contingent upon the Supplier being designated in accordance with this Clause. If in breach of this Clause, the Client fails to designate the Supplier, where the Supplier has applied such a concession, the Supplier shall be entitled to charge the Client an additional amount to reflect the applicable reduction.
- 30.12. In respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that the Client does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Client the amounts directly and the Client shall follow the payment terms in the Contract; In respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that the Client does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to charge the Client the amounts directly and the Client shall follow the payment terms in the Contract.
- 30.13. Where Azure Lighthouse is deployed, ensure the Supplier has the required access for the duration of the Contract.
- 30.14. Comply with all applicable laws and regulations with respect to its activities under the Contract.
- 30.15. In respect of any Microsoft funded services, sign and deliver the Proof of Execution (POE) on the last day of scheduled work.
- 30.16. Maintain continuous global admin access to the Client's relevant cloud services portals for the duration of the Contract; and
- 30.17. Carry out all other Client responsibilities set out in the applicable Contract or the Specific Terms in a timely and efficient manner.
- 30.18. The Supplier shall have no liability or responsibility for failure to perform the Services or its other obligations in accordance with the Contract including any Service Levels if it is prevented, hindered or delayed in doing so as a result of the Client's (including without limitation any of its employees, subcontractors or any of its staff) breach of its obligations under the Contract.

## 31. DATA PROTECTION

- 31.1. In this Clause, the following terms shall have the following meanings:
- a. "controller", "processor", "data subject", "personal data" and "processing" (and "process") shall have the meanings given in Applicable Data Protection Law;
  - b. "Applicable Data Protection Law" shall mean UK Data Protection Legislation and to the extent applicable to the Client's use of the Services to process Data the General Data Protection Regulation (EU) 2016/679);
  - c. "Data" means the personal data (as defined by Applicable Data Protection Law) provided or made available to the Supplier by or behalf of the Client and its clients and/or end users through any use or provision of the Services which may include for example information regarding clients and suppliers (for example, name, contact details, organisation details) and information regarding employees (for example, name, email address).; Issue No: 13.0 Issue Date: 31/08/2023 Classified: Commercial in Confidence
  - d. "UK Data Protection Legislation" means all applicable data protection legislation in force and as amended from time to time in the UK including the Data Protection Act 2018 and the DPPEC (Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit)) Regulations 2019.
- 31.2. The Client (the controller) appoints the Supplier as a processor to process the Data. The processing shall continue for the Term.
- 31.3. the Supplier shall process the Data as a processor as necessary to perform its obligations under the Agreement, provide the Services and in accordance with the documented instructions of the Client (the "Permitted Purpose"), except where otherwise required by any Applicable Data Protection Law. In no event shall the Supplier process the Data for its own purposes or those of any third party.
- 31.4. The Supplier shall ensure that any person that it authorises to process the Data (including its staff, agents and subcontractors) (an "Authorised Person") shall be subject to a strict duty of confidentiality (whether a contractual duty or a statutory duty), and shall not permit any person to process the Data who is not under such a duty of confidentiality. The Supplier shall ensure that all Authorised Persons process the Data only as necessary for the Permitted Purpose.
- 31.5. The Supplier shall, having regard to the nature of the Services and as more particularly set out in the Agreement, implement appropriate technical and organisational measures to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a "Security Incident").
- 31.6. The Supplier shall not subcontract any processing of the Data to a third party subcontractor without the prior written consent of the Client. If the Client refuses to consent to the Supplier's appointment of a third party subcontractor on reasonable grounds relating to the protection of the Data, then the Supplier will not appoint the subcontractor. the Client acknowledges that if Two Factor Authentication and/or Monitoring Services are comprised within the Services some subcontracting of processing to a third party will be required in order for the Supplier to provide the relevant Services.
- 31.7. The Supplier shall so far as technically practicable provide all reasonable and timely assistance to the Client (at the Client's expense) to enable the Client to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to the Supplier, the Supplier shall inform the Client as soon as reasonably practicable providing reasonable details of the same.
- 31.8. If the Supplier believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform the Client as soon as reasonably practicable and provide the Client with all such reasonable assistance at the Client's cost as the Client may reasonably require in order to conduct a data protection impact assessment.
- 31.9. Upon becoming aware of a Security Incident, the Supplier shall inform the Client without undue delay and shall provide all such timely information and cooperation as the Client may reasonably require in order for the Client to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) Applicable Data Protection Law. The Supplier shall further take all such measures and actions as are technically practicable given the nature of the Services and within its control to remedy or mitigate the effects of the Security Incident and shall keep the Client up-to-date about all developments in connection with the Security Incident.
- 31.10. The Supplier shall notify the Client as soon as reasonably practical of any legally binding request it receives from law enforcement unless such disclosure is prohibited.
- 31.11. Upon termination or expiry of this Agreement, the Supplier shall (at the Client's election) destroy or return (in accordance with clause 3.10 or 3.11 (as the case may be)) to the Client all Data (including all copies of the Data) in its possession or control (including any Data subcontracted to a third party for processing). This requirement shall not apply to the extent that the Supplier is required by any EU (or any EU Member State) law or by virtue of any other lawful grounds to retain some or all of the Data, in which event the Supplier shall isolate and protect the Data from any further processing except to the extent required by such law.
- 31.12. The Supplier shall not be in breach of this Clause if it acts on the instructions of the Client.
- 31.13. The Supplier acknowledges and agrees that the Client retains all right, title and interest in and to the Data absolutely, including but not limited to any database rights and copyright.
- 31.14. In acting as the Data controller, the Client shall:
- 31.14.1. Make due notification to any relevant regulator and shall comply at all times with the Applicable Data Protection Law;
  - 31.14.2. Ensure it is not subject to any prohibition or restriction which would:
    - a. Prevent or restrict it from disclosing or transferring the Data to the Supplier, as required under this Agreement;
    - b. Prevent or restrict it from granting the Supplier access to the Data, as required under this Agreement;
    - c. Prevent or restrict the Supplier from Processing the Data as envisaged under this Agreement;
    - d. Ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) and are sufficient in scope to enable both parties to Process the Data as required in order to obtain the benefit of its rights and to fulfil its obligations under this Agreement in accordance with Applicable Data Protection Laws.
- 31.15. The Client acknowledges and agrees that telephone calls to or from the Supplier to it may be recorded for business purposes, such as for quality control and training.
- 31.16. If an annual security audit is stated on the Quotation, this shall be performed on the Client's written request.
- 31.17. The Supplier will take all reasonable care to protect the Client's data.
- 31.18. Data will not be disclosed without the prior consent of the Client.



- 31.19. A copy of the data can be requested by an authorised representative of the Client subject to a minimum of 72 hours' notice.
- 31.20. The Supplier will store passwords and client access information by default unless the Client opts out.

## 32. SECURITY

- 32.1. The Client is solely responsible for determining the suitability of the Services in light of the nature of any data stored on the Services and for determining what steps are appropriate for maintaining security, protection and back up. the Client shall inform the Supplier of brief details of the nature of any Data stored on the Services (and update the Supplier throughout the Term if the nature of the data changes) and an overview of any encryption methods in place.
- 32.2. The Supplier shall maintain appropriate physical security controls at its data centres and shall have responsibility for those aspects assigned to it but has no obligation to provide security or back-ups of data other than as stated in the Agreement.
- 32.3. The Supplier is not responsible for:
  - a. application security;
  - b. the encryption of any data at rest/in transit other than as set out in the agreement and any relevant Product Terms;
  - c. issues caused by or in respect of the Client's code;
  - d. the administration / management of access and responsibilities for the Client's end users and for any layers above the Supplier's infrastructure.
- 32.4. The Supplier does not run any periodic checks on the integrity of Client's Data or backup data.
- 32.5. The Supplier shall have no responsibility for or any other matters for which the Supplier's liability is expressly excluded and agreed in writing between the Parties due to the nature of the Client's solution.
- 32.6. The Client is not permitted to perform penetration testing on its environment or the Supplier's network without seeking prior written approval from the Supplier.

## 33. SUPPLIER EXPENSES

- 33.1. the Client shall pay to the Supplier all costs and expenses reasonably and properly incurred by the Supplier in enforcing any of the Conditions or in exercising any of the Supplier's rights or remedies under the Agreement including (but not limited to) all costs incurred in tracing the Client in the event that legal process cannot be effected at the last known address of the Client.

## 34. BRIBERY AND CORRUPTION

- 34.1. Both parties shall and shall procure that persons associated with it shall comply with all applicable laws, statutes and regulations relating to anti-bribery and corruption. Each party shall have and maintain in place throughout the term of the Agreement its own policies and procedures under the Bribery Act 2010 to ensure compliance with the requirements under the Bribery Act 2010.

## 35. SANCTIONS/EXPORT CONTROLS

- 35.1. In entering into this Agreement the Client confirms that neither it, nor any of its stakeholders, are currently the subject of any Sanctions.
- 35.2. The Services are subject to local export control laws and regulations and dependent on the software used to deliver the Services may be subject to the export control laws and regulations of the United States. The parties shall comply with such laws and regulations governing use, export and re-export of the Services.

## 36. MODERN SLAVERY

- 36.1. In performing its obligations under the agreement, the Supplier shall:
  - a. Comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
  - b. Have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance;
  - c. Not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
  - d. Require that each of its direct subcontractors and suppliers shall comply with the Antislavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015.
- 36.2. The Supplier represents and warrants that neither the Supplier nor any of its officers, employees:
  - a. Has been convicted of any offence involving slavery and human trafficking; and
  - b. To the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 36.3. The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-Slavery policy available to the Client upon request.

## 37. PROFESSIONAL CONDUCT

- 37.1. Violence is not restricted to acts of aggression that may result in physical harm. It also includes behaviour or language (whether oral or written) that may cause staff to feel afraid, threatened or abused.
- 37.2. Examples of behaviours grouped under this heading include threats, physical violence, personal verbal abuse, derogatory remarks and rudeness. It is also considered that inflammatory statements and unsubstantiated allegations can also be abusive behaviour.
- 37.3. The Supplier expects its staff to be treated courteously and with respect. Violence or abuse towards staff is unacceptable. Staff understand the difference between aggression and anger. The anger felt by many service users involves the subject matter of their request or complaint. However, it is not acceptable when anger escalates into aggression or abuse (whether oral or written) directed towards the Suppliers' Staff.
- 37.4. Any instances of aggressive or abusive behaviour will be documented by the Supplier. The Supplier reserves the right to terminate or suspend services to any Client or user who exhibits such behaviour towards its staff.
- 37.5. IN the event of serious incidents of violence or threats, the Supplier may involve law enforcement authorities to ensure the safety of its staff.
- 37.6. the Supplier will provide its staff with training and support to handle situations involving aggressive or abusive behaviour, ensuring they can respond appropriately and safely.
- 37.7. Repeated instances of aggressive or abusive behaviour by the Client or its users will result in a review of the service agreement. Persistent abuse may lead to the termination of the service agreement without further notice.
- 37.8. The Client is responsible for ensuring that all users of the service, including their employees and associates, are aware of and comply with this professional conduct policy.

## 38. NON-SOLICITATION

- 38.1. The Client understands and agrees that any attempt on the part of the Client to induce other employees or contractors of the Supplier to leave The Supplier's employ, or any effort by the Client to interfere with the Supplier's relationship with its employees and contractors would be harmful and damaging to the Supplier.
- 38.2. the Client agrees that during the Client's term of engagement with the Supplier and for a period of five (5) years after the end of that term, the Client will not in any way, directly or indirectly:
  - a. Induce or attempt to induce any employee or contractor of the Supplier to quit employment or retainer with the Supplier;
  - b. Otherwise interfere with or disrupt the Supplier's relationship with its employees and contractors;
  - c. Discuss employment opportunities or provide information about competitive employment to any of the Supplier's employees or contractors; or
  - d. Solicit, entice, or hire away any employee or contractor of the Supplier for the purpose of an employment opportunity that is in competition or causes commercial, financial or any other harm or distress to the Supplier.
- 38.3. This non-solicitation obligation as described in this section will be limited to employees or contractors who were employees or contractors of the Supplier during the period that the Client was engaged by the Supplier.
- 38.4. During the term of the Client's active engagement with the Supplier, and for five (5) years thereafter, the Client will not divert or attempt to divert from the Supplier any business the Supplier had enjoyed, solicited, or attempted to solicit, from its clients, prior to termination or expiration, as the case may be, of the Client's engagement with the Supplier.
- 38.5. These clauses apply to all and any staff, employee, contractor in any engagement direct or indirect, remote or onsite and via services provided by the Supplier or Sub Contracted by the Supplier.
- 38.6. The Client agrees to maintain the confidentiality of all proprietary information, trade secrets, and business strategies of the Supplier and not to use this information to solicit the Supplier's employees, contractors, or clients.
- 38.7. The Client acknowledges that any breach of these non-solicitation obligations will cause irreparable harm to the Supplier and that the Supplier will be entitled to seek injunctive relief and any other legal remedies available to it.
- 38.8. The non-solicitation obligations outlined in this section will survive the termination or expiration of the Client's engagement with the Supplier.
- 38.9. This non-solicitation agreement shall be governed by and construed in accordance with the laws of the jurisdiction in which the Supplier is located, and any disputes arising from this agreement shall be subject to the exclusive jurisdiction of the courts of that jurisdiction.

## 39. CONFIDENTIAL INFORMATION

- 39.1. The Client will, or may, be making use of, acquiring or adding to information which is confidential to the Supplier (the "Confidential Information") and the Confidential Information is the exclusive property of the Supplier.
- 39.2. The Confidential Information will include all data and information relating to the business and management of the Supplier, including but not limited to, proprietary and trade secret technology and accounting records to which access is obtained by the Client, including Work Product, Computer Software, Other Proprietary Data, Business Operations, Marketing and Development Operations, and Client Information, Resources, contracts and proposals.
- 39.3. The Confidential Information will also include any information that has been disclosed by a third party to the Supplier and is governed by the Data Protection Act or by a non-disclosure agreement entered into between that third party and the Supplier.
- 39.4. The Confidential Information will not include information that:
  - a. Is generally known in the industry of the Supplier;
  - b. Is now or subsequently becomes generally available to the public through no wrongful act of the Client;
  - c. Was rightfully in the possession of the Client prior to the disclosure to the Client by the Supplier;
  - d. Is independently created by the Client without direct or indirect use of the Confidential Information; or
  - e. the Client rightfully obtains from a third party who has the right to transfer or disclose it.
- 39.5. The private affairs, business secrets and any other confidential information relating to the Supplier or the Suppliers clients, which the Client may acquire in the course of the Client's engagement will be maintained in the strictest confidence, and the same will not be disclosed to any third party without appropriate written authority from the Supplier.
- 39.6. The Client shall not use any materials, database, contacts, documentation, information obtained from the Supplier for any purpose after the departure from the Supplier.
- 39.7. The Client agrees:
  - a. Not to disclose or communicate, in any manner, either during or after the Client's engagement with the Supplier, any Confidential Information to any third party without the prior written consent of the Supplier;
  - b. To use the Confidential Information solely for the purpose of carrying out the Client's duties for the Supplier;

- c. To take all reasonable precautions to protect the confidentiality of the Confidential Information, including following any specific instructions given by the Supplier regarding the handling of Confidential Information.
- 39.8. Upon termination or expiration of the Client's engagement, or upon request by the Supplier, the Client agrees to promptly return all Confidential Information and any copies thereof to the Supplier, and to delete or destroy any electronic copies of Confidential Information in the Client's possession.
- 39.9. The Client acknowledges that any breach of this clause may cause irreparable harm to the Supplier and agrees that the Supplier shall be entitled to seek injunctive relief and any other legal remedies available to it to prevent or address any such breach.
- 39.10. The obligations set forth in this clause will survive the termination or expiration of the Client's engagement with the Supplier.
- 39.11. The Client agrees to comply with all applicable data protection laws and regulations in relation to the handling of any personal data included in the Confidential Information.

## 40. INTELLECTUAL PROPERTY

- 40.1. The Supplier grants to the Client a limited, non-exclusive licence to use the Services during the Term of the Agreement and subject to the restrictions set forth in the Agreement which licence does not entitle the Client to any updates, modifications or new releases to any deliverables or software.
- 40.2. The Supplier reserves any and all of the Supplier's copyright, trademarks, trade names, patents and all other intellectual property rights created, developed, subsisting or used in connection with any deliverables, software and/or the Services which are the sole property of the Supplier.
- 40.3. The Client shall not transfer the Client's licence nor sublicense the deliverables or the software except where permitted to do so by the terms of the Agreement and in particular the Client shall not (and shall not allow any third party to):
  - a. remove any product identification, copyright, trademark or other notices;
  - b. sell, pledge, lease, lend, distribute over the Internet;
  - c. load or use portions of the software (whether or not modified or incorporated into or with other software) on or with any machine or system that is not physically kept at the facilities of the Client or within third party facilities contracted by the Client.
- 40.4. The Client shall not disassemble, decompile or otherwise reverse engineer the Services provided under the Agreement.

## 41. INDEMNITY

- 41.1. The Client shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Supplier services, provided that:
  - a. the Client is given prompt notice of any such claim;
  - b. the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
  - c. the Client is given sole authority to defend or settle the claim.

## 42. LIMITATION OF LIABILITY

- 42.1. In no event will the Supplier or its staff be liable for any damages, including loss of profit, or any other direct, indirect, incidental or consequential damages, arising from the use of, or the inability to use, the hardware and software provided by the Supplier.
- 42.2. This clause sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
  - a. any breach of these terms or the contract;
  - b. any use made by the Client of the service, the software or hardware; and
  - c. any representation, statement or tortious act or omission (including negligence) arising under or in connection with these terms or the contract.
- 42.3. Except as expressly and specifically provided in the contract or these terms:
  - a. the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the service; and
  - b. all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 42.4. Nothing in the contract excludes the liability of the Supplier:
  - a. for death or personal injury caused by the Supplier's negligence; or
  - b. for fraud or fraudulent misrepresentation.
- 42.5. subject to clause 16.4:
  - a. the Supplier shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising; and
  - b. the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the price paid by the Client for the service during the 12 charging periods preceding the date on which the claim arose.
- 42.6. Except for the Supplier's liability to the Client listed in the limitation of liability clauses (where no limit applies) the Supplier's aggregate liability arising under or in connection with the Agreement for the provision of the Services whether in contract, tort, negligence, breach of statutory duty or otherwise howsoever arising shall not exceed the greater of:
  - a. £5,000 (FIVE THOUSAND POUNDS); and
  - b. the total amounts paid by the Client in the month when the event giving rise to the liability occurs (or the first event in any series of connected events) occurs.
- 42.7. In no case shall the Supplier be liable either to the Client or to any third party for or in respect of any:
  - a. indirect, consequential, special or economic loss; or

- b. loss of profit, loss of business, loss of goodwill, loss of turnover, loss of reputation, loss of anticipated savings or loss of margin (in each case whether direct or indirect); arising from its performance or non-performance of its obligations in connection with the Agreement whether arising from breach of contract, tort, breach of duty, negligence or any other cause of action even if the event was foreseeable by the Supplier or the possibility thereof is or had been brought to the attention of the Supplier.

## 43. INSURANCE

- 43.1. The Supplier is responsible for carrying its own insurances set out below:
  - a. Public Liability
  - b. Professional Indemnity
  - c. Employers Liability

## 44. NOTICES

- 44.1. Any notice required to be given under these terms or the contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class or second-class post or recorded delivery post to the other party at its address set out in the contract, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's primary contact email address as previously notified.
- 44.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class or second-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission.
- 44.3. Suspension notices served pursuant to the suspension clause shall be deemed as duly delivered and received when sent by email to such email address as the Client may have previously notified the Supplier.

## 45. WAIVER

- 45.1. A waiver of any right under the contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 45.2. Any allowance of time to pay or any other form of indulgence by the Supplier shall in no manner affect or prejudice the Supplier's right to payment and interest pursuant to the Conditions or otherwise under this Agreement.
- 45.3. No failure, neglect or delay in enforcing any of the terms of the Agreement may be construed as a waiver of any of the Supplier's rights in respect thereof nor such neglect, failure or delay a variation of the express terms of the Agreement.
- 45.4. Unless specifically provided otherwise, rights arising under the contract are cumulative and do not exclude rights provided by law.

## 46. SEVERANCE, INVALIDITY

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

## 47. FORCE MAJEURE

- 47.1. The Supplier shall have no liability to the Client under the contract if it is prevented from or delayed in performing its obligations under the contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the Clients or sub-contractors of the Supplier or any other party), failure of a utility service or transport network, act of god, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of the Supplier or sub-contractors, provided that the Client is notified of such an event and its expected duration.

## 48. ASSIGNMENT

- 48.1. The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the contract or these terms.
- 48.2. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the contract or these terms.

## 49. CLAUSE HEADINGS

- 49.1. Clause headings are for ease of reference but do not form part of the Agreement and accordingly shall not affect its interpretation.

## 50. NO PARTNERSHIP OF AGENCY

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

## 51. THIRD PARTY RIGHTS

- 51.1. These terms are not intended to and do not give any person who is not a Party to these terms any rights to enforce any provisions contained in these terms (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 52. ENTIRE AGREEMENT

- 52.1. These terms, the contract and any documents referred to in them, constitute the entire agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 52.2. Each of the parties acknowledges and agrees that in entering into the Contract does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in these terms. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of Contract under the terms of these terms.

## 53. VARIATION AND UPDATES

- 53.1. The Supplier reserves the right to vary the Agreement as a result of changes required by its insurers, for operational or administrative reasons or in order to comply with changes in the law.
- 53.2. The Supplier agrees to notify the Client of any material changes to the terms and conditions. Material changes shall include changes that significantly affect the rights or obligations of the Client under the Agreement.
- 53.3. The Supplier will provide the Client with 14 days' notice of any significant changes to the Agreement.
- 53.4. The Supplier will specifically define what constitutes "significant changes" to the Agreement in the notice provided to the Client.
- 53.5. Terms and conditions are accessible here [www.creative-n.com/terms](http://www.creative-n.com/terms) for reference at any-time.
- 53.6. SLAs and policies may change and will be updated on the website.
- 53.7. Notification of changes shall be sent to the Client's primary contact email address as provided in the Agreement.
- 53.8. the Client shall have the right to object to material changes within the notice period. If the Client objects, the Supplier and Client shall negotiate in good faith to reach a mutually acceptable resolution. Failure to object within this period shall be deemed as acceptance of the changes.
- 53.9. Changes to the terms and conditions shall become effective 30 days after the date of notification, unless otherwise specified in the notice.
- 53.10. the Client's continued use and/or payment of the services after the effective date of changes constitutes acceptance of the new and updated terms and conditions.
- 53.11. The updated terms and conditions shall be accessible on the Supplier's website at all times for the Client's reference.
- 53.12. If any provision of the updated terms and conditions is found to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable to the fullest extent permitted by law.
- 53.13. the Client will keep the Supplier promptly informed of any changes to the Client's address and such other information as may affect the payment of charges due.

## 54. GOVERNING LAW AND JURISDICTION

- 54.1. The contract and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales.
- 54.2. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the contract.
- 54.3. Prior to initiating any legal proceedings, the parties agree to attempt to resolve any disputes or claims through alternative dispute resolution methods, such as mediation or arbitration, as agreed upon by both parties.
- 54.4. All legal proceedings shall be conducted in English.
- 54.5. Each party irrevocably waives any right it may have to assert the doctrine of forum non conveniens or to object to venue with respect to any proceeding brought in accordance with this clause.
- 54.6. Each party agrees that service of any court documents may be effected on it by sending the documents by registered mail to its address set forth in the Agreement.
- 54.7. Should any provision of this clause be deemed unenforceable, the remainder of this clause shall remain in full force and effect.



## 55. WORDING, DEFINITIONS, INTERPRETATION

55.1. The definitions and rules of interpretation in this clause apply to these terms and also the contract.

<b>Acceptance</b>	The Client's acknowledgment and agreement to the terms and conditions.
<b>Administration Fee</b>	A fee charged by the Supplier for specific administrative actions, such as handling non-Direct Debit payments.
<b>Agreement (Master Service Agreement/MSA)</b>	A contract between Rycramweb Ltd and the Client, detailing the terms and conditions for the provision of services.
<b>Application</b>	Is a utility to assist end users, these are installed by the Supplier. Any third-party Applications are not supported.
<b>Authorised Users</b>	Those employees and independent contractors of the Client who are entitled to use the Suppliers services.
<b>Best Effort Basis</b>	The Supplier's commitment to make a sincere attempt to provide services, though not guaranteeing a specific outcome.
<b>Breach</b>	A violation of the terms and conditions set out in the agreement by either party.
<b>Business day</b>	Any day which is not a Saturday, Sunday or public holiday in the UK
<b>CEDR</b>	Centre of Dispute Resolution, an organisation that provides mediation services.
<b>Charges</b>	Fees payable by the Client for the Goods and Services provided by the Supplier.
<b>Charging period</b>	A period of a full calendar month or year or any part thereof.
<b>Client</b>	Means any device including Laptops, Workstations, Thin Clients and any other device that can be categorised as a Client.
<b>Client data</b>	The data stored as a backup or client details stored on the Supplier network by the Supplier on the Client's behalf.
<b>Confidential Information</b>	Any information exchanged between the Supplier and the Client that must remain confidential as per the agreement.
<b>Contract</b>	The contract between the Supplier and the Client based on the standard the Supplier application form (incorporating these terms) and also a Direct Debit Mandate completed and established by the Client.
<b>Commencement</b>	The start date of the agreement, which begins once the contract is signed.
<b>Core Business Hours</b>	8:30 am to 6.00 pm local UK time, Monday to Friday, excluding public holidays.
<b>Corruption</b>	Means that an application/program/utility/operating system is not functioning as per its intended design.
<b>Disputed Invoice</b>	An invoice that the Client contests, specifying reasons for disagreement.
<b>Dispute Notice</b>	A written notification that a dispute has arisen and has not been resolved by initial negotiations.
<b>Duration</b>	The length of time the contract remains in effect until terminated by either party.
<b>Effective date</b>	The date of the contract between the Supplier and the Client.
<b>Export Fee</b>	A fee levied to the Client for exporting a service from the Supplier to another provider or platform.
<b>Fees</b>	The fees payable to the Supplier at the rate applicable from time to time and detailed in the proposal or contract.
<b>First Response</b>	Refers to the time from the issue being reported by the Client and a Ticket Number being issued by the Supplier, until the call has been allocated to the appropriate Systems Engineer, who will then contact the Client.
<b>Force Majeure</b>	An unforeseeable event that prevents either party from fulfilling their contractual obligations.
<b>Goods and Services</b>	The products and services provided by the Supplier as described in the contract.
<b>Initial Term</b>	The initial period during which the contract is in effect before any renewals.
<b>Insolvency</b>	The state of being unable to pay debts, leading to potential legal proceedings such as bankruptcy.
<b>Invoice</b>	A bill issued by the Supplier to the Client, detailing the amount due for the Goods and Services provided.
<b>Indemnification</b>	The Client's obligation to compensate the Supplier for any claims or damages arising from the use of Third Party Software.
<b>Late Payment of Commercial Debt Act</b>	Legislation that allows the Supplier to claim interest and compensation on late payments from the Client.
<b>Legal Representative</b>	A lawyer or legal entity appointed by the Supplier to enforce outstanding payments or handle legal matters related to the agreement.
<b>Liability</b>	Refers to the legal responsibility or obligation of an individual or entity to compensate others for harm or loss caused by their actions or omissions.
<b>Model Mediation Procedure (MMP)</b>	A structured process for mediation as defined by the Centre of Dispute Resolution (CEDR).
<b>Nominated Support Contact</b>	The person through whom all other end users log calls to the Supplier.
<b>Notice</b>	A formal communication, usually in writing, regarding important actions such as termination or price increases, required by the terms of the agreement.

<b>One Day</b>	Equivalent to 8 hours.
<b>Outstanding Payments</b>	Amounts due from the Client to the Supplier that have not been paid by the due date.
<b>Post Installation Support</b>	Services and assistance provided by a vendor or service provider after a product or system has been installed at the client's site.
<b>Price Increase</b>	An adjustment in the fees charged by the Supplier, subject to annual review and inflation.
<b>Priority</b>	Defined at the 1st response of a call, where the Supplier and the Client will agree on the urgency of the call.
<b>Quotation</b>	A document listing the requested Goods and Services and their applicable charges.
<b>Recurring Services</b>	Services provided on a continuous basis, requiring regular payment, usually by Direct Debit.
<b>Renewal</b>	The process of extending the contract beyond its initial term.
<b>Renewal Period</b>	Successive twelve-month periods (each a "Renewal Period").
<b>Resolution</b>	The expected level of service is now operational for the Client.
<b>Restocking Fee</b>	A fee applied for the return or cancellation of Goods.
<b>Service</b>	The various functions and work provided by the Supplier to the Client.
<b>Service Level Agreement (SLA)</b>	A specific contract between the Supplier and the Client that defines the level of service expected.
<b>Shipping Charges</b>	Fees associated with the transport of goods.
<b>Sign-off</b>	Client approval indicating that installation or service has been completed to their satisfaction.
<b>Order Form</b>	A document listing the requested Goods and Services and their applicable charges.
<b>Statement of Work (SOW)</b>	A detailed document outlining the work to be performed under the contract, including timelines and deliverables.
<b>Supplier</b>	Refers to Rycramweb Ltd, the company providing the services.
<b>Suspension</b>	The temporary halt of services by the Supplier due to specific breaches by the Client.
<b>Target Resolution</b>	The target timeframe within which the Supplier will endeavour to resolve the incident.
<b>Termination</b>	The ending of the contract by either party, as stipulated in the agreement.
<b>Third Party</b>	The provider of a service to the Supplier who then provides it to the Client.
<b>Value Added Tax (VAT)</b>	A tax added to the Supplier's invoice(s) at the appropriate rate.
<b>Warranty</b>	Refers to a written or implied guarantee provided by a seller or manufacturer assuring the buyer that a product or service will meet certain standards of quality, performance, or condition. It outlines the conditions under which the seller or manufacturer will repair, replace, or refund the product or service if it fails to meet these standards within a specified period after purchase.
<b>Workaround</b>	Adequate functionality has been restored temporarily while a permanent resolution is being investigated.

- 55.2. A reference to a Business or Company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 55.3. Words in the singular shall include the plural and vice versa.
- 55.4. A reference to writing or written includes faxes, e-mail and postal letters.
- 55.5. References to clauses and schedules are to the clauses and schedules of these terms.
- 55.6. References to paragraphs are to paragraph of the relevant schedule.