

BROOKLAND SOLUTIONS LTD - TERMS AND CONDITIONS OF SALE

BACKGROUND

The Supplier is authorised by Microsoft Corporation and other partners to licence certain software applications and platforms to its customers for the purpose of providing Microsoft solutions and software, consultancy services, training and support services.

The Customer wishes to use the Supplier's services in its business operations.

The Supplier has agreed to provide and the Customer has agreed to use and pay for the Supplier's services subject to the following terms and conditions.

THE PARTIES AGREE:

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

"Authorised Users" those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2.4.

"Business Day" a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Change of Control" shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

"Commencement Date" the start date of the Services as outlined at clause 1.10 below, or as otherwise confirmed to the Customer.

"Conditions" these terms and conditions, also referred to as the 'agreement', as amended from time to time in accordance with clause 17.

"Confidential Information" information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5 or clause 11.6.

"Consultancy Services" means those services supplied to the Customer by the Supplier.

"Contract" the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

"Customer" the person, entity, organisation or firm who purchases Services from the Supplier.

"Customer Data" the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

"Documentation" the Statement of Work and other documents made available to the Customer by the Supplier from time to time which sets out a description of the Services and any user instructions for the Services.

"Expiry Date" the end date of the Services.

"Heightened Cybersecurity Requirements" any laws, regulations, codes, guidance (from regulatory and advisory bodies whether mandatory or not), international and national standards, and sanctions, which are applicable to either the Customer or an Authorised User relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

"Initial Subscription Term" means the period starting on the Commencement Date and ending on the Expiry Date.

"Maintenance and Support Services" means those services to be supplied to the Customer by the Supplier.

"Normal Business Hours" 9.00 am to 5.30 pm local UK time, each Business Day.

“Order” the Customer's order for the Goods, as set out in: (i) a purchase order form; (ii) the Supplier's quotation document; or (iii) the Statement of Work, as the case may be.

“Renewal Period” the period described in clause 14.1.

“Services” the subscription and licence services, Consultancy Services, Maintenance and Support Services, development and extension services and Software provided by the Supplier to the Customer (as applicable) under this agreement from time to time, as more particularly described in the Documentation.

“Software” the online software applications provided by the Supplier as part of the Services, as set out in the Order.

“Software Schedule” means the document(s) agreed between the parties setting out details of the Software to be licensed by the Customer from the Supplier under this agreement, as set out in the Order.

“Statement of Work” means the description of Services to be provided by the Supplier, together with payment details and any relevant timetable for performance of the Services, as set out in the Order

“Subscription Fees” the monthly or annual subscription fees (including any Microsoft enhancement add-ons, if opted for) payable by the Customer to the Supplier for the User Subscriptions for the Subscription Term, as set out in clause 14.

“Subscription Term” has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

“Supplier” Brookland Solutions Limited registered in England and Wales with company number 06455875.

“User Subscriptions” the user subscriptions or licences purchased by the Customer pursuant to clause 9.1 and the Software Schedule which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

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

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.8 A reference to writing or written includes fax and e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.
- 1.10 An Order shall be deemed to be accepted upon the earlier of the following:
 - (i) when the Supplier issues a written acceptance of an Order;
 - (ii) when the Customer gives written confirmation by email, or recorded verbal confirmation over Teams, Zoom or any other electronic platform, of the Order, or any other document detailing the Services, to be provided by the Supplier;
 - (iii) when the Customer makes payment (in full or in part) in line with the terms of an Order (including any advance payments or deposits);
 - (iv) when the Supplier performs any act consistent with performing an Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2 USER SUBSCRIPTIONS / LICENCES

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right (without the right to grant sublicences) to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- 2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- 2.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- 2.2.3 each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed regularly and each Authorised User shall keep their password confidential;
- 2.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list (if requested) to the Supplier within five (5) Business Days of such request;
- 2.2.5 it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
- 2.2.6 if any of the audits referred to in clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
- 2.2.7 if any of the audits referred to in clause 2.2.5 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Order within ten (10) Business Days of the date of the relevant audit.
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 2.3.2 facilitates illegal activity;
- 2.3.3 depicts sexually explicit images;
- 2.3.4 promotes unlawful violence;
- 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 2.3.6 is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.4 Pursuant to clause 6 below, certain Third Party Software is incorporated within the Software. This Third Party Software is hereby incorporated into this agreement and shall be binding on the Customer on a pass-through basis. In particular, the Customer shall not:
- 2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
- 2.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- 2.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 2.4.3 use the Services and/or Documentation to provide services to third parties; or
- 2.4.4 subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
- 2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- 2.4.6 introduce or permit the introduction of any Virus into the Supplier's network and information systems; or
- 2.4.7 install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

3 ADDITIONAL USER SUBSCRIPTIONS

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Order and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this agreement.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where the Supplier approves the request and the Customer has paid for all the additional User Subscriptions, the Supplier shall activate the additional User Subscriptions within 5 Business Days of receipt of such Customer payment.
- 3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall pay for such additional User Subscriptions in advance and in full and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4 SERVICES

General services

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week (excluding Consultancy Services and Maintenance and Support Services), except for:
 - 4.2.1 planned maintenance carried out during any notified maintenance windows
 - 4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least six (6) Normal Business Hours' notice in advance.

Maintenance and support services

- 4.3 The Supplier will, as part of the Services and in consideration of the maintenance and support fees, provide the Customer with standard customer support services during Normal Business Hours. The Supplier does not have to provide any Maintenance and Support Services outside Normal Business Hour unless otherwise agreed in writing. Maintenance and Support Services supplied outside Normal Business Hours may be charged for on a time and materials basis. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

4.4 In addition to the general terms contained in this agreement, separate terms and conditions set shall apply to all Maintenance and Support Services, which shall be provided to the Customer from time to time.

5 DATA PROTECTION

5.1 The following definitions apply in this clause 5:

Agreed Purpose: The performance by each party of its obligations under this agreement, and the provision of Services that form the subject of this agreement.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisation measures: as set out in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (**DPA 2018**) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including the privacy of electronic communications);

Permitted Recipients: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement;

Shared Personal Data: the personal data to be shared between the parties under this agreement.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

5.2 This clause 5 sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

5.3 Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation.

5.4 Each party shall:

5.4.1 ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;

5.4.2 give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;

5.4.3 process the Shared Personal Data only for the Agreed Purposes;

5.4.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

5.4.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this agreement;

5.4.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;

5.4.7 not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that:

5.4.7.1 the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or

5.4.7.2 there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or

5.4.7.3 the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or

5.4.7.4 one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

5.4.8 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- 5.4.8.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- 5.4.8.2 promptly inform the other party about the receipt of any data subject rights request;
- 5.4.8.3 provide the other party with reasonable assistance in complying with any data subject rights request;
- 5.4.8.4 not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
- 5.4.8.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- 5.4.8.6 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- 5.4.8.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination or expiry of this agreement unless required by law to store the Shared Personal Data;
- 5.4.8.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- 5.4.8.9 maintain complete and accurate records and information to demonstrate its compliance with this Clause 5; and
- 5.4.8.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
- 5.4.9 Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it. The liability of the indemnifying party under this clause shall be subject to the limits set out in clause 13.

6 THIRD PARTY PROVIDERS AND ADDITIONAL TERMS

- 6.1 The Customer acknowledges that the Services (or part of the Services) may enable or assist it to access the website or content of, correspond with, use and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.
- 6.2 Any applicable warranties in relation to the Software, shall be contained in the relevant documents and agreements relating to such Software (see below). The Supplier shall (where applicable) pass on to the Customer any warranty terms relating to the Software provided to it by any third party.
- 6.3 The Services (or part of the Services) are either licensed by: (1) Microsoft software applications and platforms (which are available via the internet on a pay-per-use subscription basis); or (2) other software providers whereby software is not produced specifically for the Customer, but the use of which is either licensed directly to the Customer by the third party or sub-licensed to the Customer by the Supplier ("**Third Party Software**").
- 6.4 The Third Party Software shall be deemed to be incorporated within the Software for the purposes of this agreement on a pass-through basis (except where expressly provided to the contrary) and use of the Third Party Software shall be subject to the following terms and conditions, which are also incorporated into this agreement:

<https://www.microsoft.com/licensing/docs/customeragreement>

- 6.5 At all times, the Customer shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third Party Software and any associated terms and conditions howsoever arising. Accordingly, the Supplier may treat such Customer breach of any Third-Party Additional Terms as a breach of this Licence.

7 SUPPLIER'S OBLIGATIONS

- 7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance (if practicable). Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.
- 7.3 The Supplier:
- 7.3.1 does not warrant that:
- 7.3.1.1 the Customer's use of the Services will be uninterrupted or error-free; or
- 7.3.1.2 that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
- 7.3.1.3 the Software or the Services will be free from Viruses; or
- 7.3.1.4 the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.
- 7.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 7.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.
- 7.6 The Supplier shall use all reasonable endeavours to keep safe Customer Data. However, such Customer Data is ultimately held by Microsoft and/or other third party platforms and in the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore (and liaise with Microsoft and any other relevant third parties to restore) the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Microsoft. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up) for which it shall remain fully liable.

8 CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- 8.1.1 provide the Supplier with:
- 8.1.1.1 all necessary co-operation in relation to this agreement and any Third Party Software; and
- 8.1.1.2 all necessary access to such information as may be required by the Supplier;
- in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- 8.1.2 without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement;

- 8.1.3 carry out all other customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 8.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement (and any other applicable terms including, but not limited to, the Third Party Software pursuant to clause 6.3) and shall be responsible for any Authorised User's breach of this agreement;
- 8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- 8.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 8.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 8.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9 CHARGES AND PAYMENT

- 9.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 9 and the charges shall be calculated in accordance with the Supplier's rates as set out in the Order, or as otherwise provided to the Customer, which may include any annual enhancements by Microsoft (as applicable). The Subscription Fees are exclusive of any travel, accommodation, materials or other expenses incurred by the Supplier in carrying out its obligations under this agreement, which shall be invoiced by the Supplier and paid by the Customer.
 - 9.2 The Customer shall on the Commencement Date provide to the Supplier valid contact and billing details, and shall set up and maintain a direct debit or standing order mandate in favour of the Supplier for payment of all amounts due under this agreement.
 - 9.3 If the Supplier has not received any payment under this agreement within seven (7) days before its due date, and without prejudice to any other rights and remedies of the Supplier:
 - 9.3.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 9.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of The Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
 - 9.4 All amounts and fees stated or referred to in this agreement:
 - 9.4.1 shall be payable in GBP (£) pounds sterling;
 - 9.4.2 are non-cancellable and non-refundable;
 - 9.4.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate;
 - 9.4.4 are inclusive of insurance premiums for customer insolvency protection and/or cancellation protection (or other similar insurances).
 - 9.5 The Supplier shall be entitled to increase:
 - 9.5.1 the Subscription Fees;
 - 9.5.2 the fees payable in respect of any additional User Subscriptions purchased pursuant to clause 3.3;
 - 9.5.3 the support fees payable pursuant to clause 4.3;
- at the start of each Renewal Period upon sixty (60) days' prior notice to the Customer and **Error! Reference source not found.** (together with any other applicable schedules) shall be deemed to have been amended accordingly.

9.6 The Supplier shall be entitled to increase the Subscription Fees, and any other fees applicable to the Services, on a pass-through basis (i.e. without additional mark-up) at any time by written notice to the Customer where, in circumstances beyond the Supplier's reasonable control: (a) the third party provider / Microsoft increases the fees in its price list; and (b) such increase applies to the continued use of the relevant Software and/or Services.

10 PROPRIETARY RIGHTS

10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

10.3 Should any intellectual property rights (of whatever nature) arise from or in connection with, or be created from the Services and/or the Documentation, the Customer agrees that such intellectual property rights shall be owned by the Supplier and/or its licensors (as the case may be). The Customer hereby agrees to undertake all action necessary to ensure that such intellectual property rights are transferred absolutely from the Customer (or its subsidiaries and/or affiliates) to the Supplier and/or its licensors (as the case may be).

11 CONFIDENTIALITY

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:

11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

11.1.2 was in the other party's lawful possession before the disclosure;

11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11.8 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

12 INDEMNITY

- 12.1 The Customer 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 Customer's use of the Services and/or Documentation, provided that:
 - 12.1.1 the Customer is given prompt notice of any such claim;
 - 12.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 12.1.3 the Customer is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this agreement infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 12.2.1 the Supplier is given prompt notice of any such claim;
 - 12.2.2 the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - 12.2.3 the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on three (3) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 12.4.1 a modification of the Services or Documentation by anyone other than the Supplier; or
 - 12.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - 12.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5 The foregoing and clause 13.3.2 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13 LIMITATION OF LIABILITY

- 13.1 Except as expressly and specifically provided in this agreement:
 - 13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. 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 Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - 13.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
 - 13.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 13.2 Nothing in this agreement excludes the liability of the Supplier:
 - 13.2.1 for death or personal injury caused by the Supplier's negligence; or
 - 13.2.2 for fraud or fraudulent misrepresentation.
- 13.3 Subject to clause 13.1 and clause 13.2:
 - 13.3.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or

- for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- 13.3.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 5.4.9 and clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.
- 13.4 Nothing in this agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

14 TERM AND TERMINATION

- 14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods equal to the Initial Subscription Term (each a **Renewal Period**), unless:
- 14.1.1 either party notifies the other party of termination, in writing, at least ninety (90) days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 14.1.2 otherwise terminated in accordance with the provisions of this agreement;
- and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
- 14.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 14.2.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
- 14.2.2 the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
- 14.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 14.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.2.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 14.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 14.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 14.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 14.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- 14.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2.3 to clause 14.2(j) (inclusive);
- 14.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

- 14.2.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
- 14.2.14 there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.3 On termination of this agreement for any reason:
 - 14.3.1 all licences granted under this agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
 - 14.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - 14.3.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the Commencement Date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
 - 14.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
 - 14.3.5 Subject to clause 14.1.1, if this agreement is terminated (for whatever reason) at any time during a Subscription Term or a Renewal Period (as the case may be), the Customer shall immediately pay to the Supplier all of the Supplier's unpaid invoices and interest and, where no invoice has been submitted for the Services supplied, the Supplier may submit an invoice which will be payable within thirty (30) days of receipt.
 - 14.3.6 Subject to clause 14.1.1 and clause 14.3.7, upon termination of this agreement pursuant to clauses, 14.2.1, 14.2.2, 14.2.13 or 14.2.14 (or any repudiation of this agreement by the Customer which is accepted by the Supplier), without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand a sum equal to the total amount of the Subscription Fees that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Subscription Term.
 - 14.3.7 Upon termination of this agreement pursuant to clauses 14.2.3 to 14.2.12 (or upon notification to the Supplier of such events in clauses 14.2.3 to 14.2.12), without prejudice to any other rights or remedies of the Supplier, all fees that are due and payable in arrears shall immediately become payable annually in advance, with such sums being payable on demand.
 - 14.3.8 The sums payable pursuant to clause 14.3.6 shall be agreed compensation for the Supplier's loss and shall be payable in addition to the sums payable pursuant to clause 14.3.5.

15 **FORCE MAJEURE**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications 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 or non-performance of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16 **CONFLICT**

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the Schedules of this agreement shall prevail.

17 **VARIATION**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18 WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19 RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20 SEVERANCE

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

21 ENTIRE AGREEMENT

21.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

22 ASSIGNMENT

22.1 The Customer 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 this agreement.

22.2 The Supplier may assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement provided that two (2) weeks' notice is given to the Customer.

23 NO PARTNERSHIP OR AGENCY

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

24 THIRD PARTY RIGHTS

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

25 COUNTERPARTS

25.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

25.2 Transmission of the executed signature page of a counterpart of this agreement by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

25.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

26 NOTICES

26.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax or email to the other party's fax number or email address as notified and agreed between the parties, or as may be updated from time to time.

26.2 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 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 fax or email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

27 GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This has been entered into on the Commencement Date.