

## TERMS AND CONDITIONS

This Agreement is entered into between you and us, together the **Parties** and each a **Party**.

### 1. Acceptance

1.1 You accept this Agreement by the earlier of:

- (a) signing and returning this Agreement to us, including by email or any electronic executions platform acceptable to us;
- (b) confirming by email that you accept this Agreement; and
- (c) confirming that you accept this Agreement via the platforms or applications through which we provide this Agreement to you, including our website.

### 2. Group Entities

2.1 The Parties acknowledge and agree it is their intention that:

- (a) each of your Group companies may make purchase the Services pursuant to Service Orders under this Agreement, without having to enter into a separate agreement with us or one of our Group companies; and
- (b) each of our Group companies may supply the Services pursuant to Service Orders under this Agreement, without having to enter into a separate agreement with you or any of your Group companies.

2.2 To give effect to this intention, the Parties accordingly agree that:

- (a) we and you each enter into this Agreement on our and your behalf and as agent for each other member of our or your respective Groups, so that we and you may each:
  - (i) as applicable, purchase or supply Services pursuant to Service Orders under this Agreement; and
  - (ii) exercise, enforce and claim the benefit of all rights granted in this Agreement, in respect of the relevant Service Order, on its behalf;
- (b) any Liability arising from or in connection with a Service Order will be as between the relevant parties to the Service Order;
- (c) any Liability arising from or in connection with a Contract will be limited to our or your Group company which caused or was responsible for the Liability, and other members of the relevant Group will not be jointly or severally liable in respect of the Liability; and
- (d) any party to a Service Order that suffers or incurs a Liability may claim and seek to recover against the other party to the Service Order, or we or you may claim and seek to recover the Liability suffered by the relevant related party to the Service Order, on behalf of that relevant related party to the Service Order.

### 3. Services

- 3.1 In consideration of your payment of the Fees, we will provide the Services in accordance with this Agreement, whether ourselves or through our Personnel.
- 3.2 We agree to provide the Services for the Term.
- 3.3 We will not be responsible for any Services unless expressly set out in the inclusions in the Schedule or a Service Order.
- 3.4 Except to the extent Service Credits apply, if this Agreement expresses a time within which the Services are to be provided, we will use reasonable endeavours to provide the Services by such time, but you agree that such time is an estimate only, and creates no obligation on us to provide the Services by that time.
- 3.5 Subject to any other provisions of this Agreement, we will commence providing the Services within a reasonable time after the Commencement Date, or as otherwise agreed between the Parties in the Schedule, a Service Order, or otherwise.

### 4. Service Orders

- 4.1 This Agreement constitutes a “standing offer” under which, during the Term, you may engage us to provide the Services under separate Service Orders.
- 4.2 You may issue a request for us to provide further Services (beyond those Services that are particularized in the Schedule) sending an email to your Techary account manager (or in the event you have no account manager, by emailing sales-ops@techary.com) or by any other process which we may advise to you, from time to time (Service Order Request).
- 4.3 We may, in our discretion, accept or reject a Service Order Request (and any Statement of Work request). If we accept the Service Order Request (or any Statement of Work request), we will provide you with a Service Order (or Statement of Work), and once the Service Order (or Statement of Work) is agreed by both Parties in accordance with the Service Order (or Statement of Work), it will be binding in accordance with the terms of this agreement and the Service Order (and/or Statement of Work).
- 4.4 The Parties agree that, in relation to certain Services, they may agree on a standing Service Order, and that particular commercial details in the Service Order (for example, the Price and Payment Terms) will be determined pursuant to further Statements of Work, which are issued under the Service Order.

4.5 Each Service Order (and any Statement of Work) is subject to, and will be governed by, this Agreement and any other conditions agreed to by the Parties in writing. To the extent of any ambiguity or discrepancy between a Service Order (and any Statement of Work) and this Agreement, the terms of the Service Order (and/or the Statement of Work) will prevail.

## 5. Authorised Users

5.1 You agree that your access to and use of some parts of the Services must be in accordance with the number of Authorised Users (or Authorised Users per device), where applicable, as set out in the Schedule or the relevant Service Order.

5.2 You will ensure each Authorised User complies with the terms of this Agreement.

5.3 You may, at any time, request an increase in the number of Authorised Users (or Authorised Users per device) by submitting this request to us via email, by logging a request via our Service Desk or by logging a request via our portal, and this will be considered a Variation or a deemed Variation in accordance with clause 28.

## 6. Third Party Inputs

6.1 You acknowledge and agree that the Services may interact with, or be reliant on, certain Third Party Inputs, including but not limited to your operating system, web browser and third party applications.

6.2 You acknowledge and agree that, unless we have expressly agreed to provide the services described in this clause 6.2 in the Schedule or a relevant Service Order:

- (a) you are responsible for obtaining and managing all licences for the relevant Third Party Inputs;
- (b) you are responsible for paying all fees related to the Third Party Inputs; and
- (c) you agree to comply with terms and conditions applicable to the relevant Third Party Inputs at all times.

6.3 We do not make any warranty or representation in respect of any Third Party Inputs.

6.4 To the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with any Third Party Inputs, subject to clause 6.5.

6.5 Should any unavailability, error or change to a Third Party Input have a substantial and adverse impact on your use and enjoyment of the Services:

- (a) you agree to notify us in writing within 90 days of the change coming into effect; and

(b) following receipt of such notice by us, the Parties will use all reasonable endeavours to work together to resolve the matter.

6.6 This clause 6 will survive the termination or expiry of this Agreement.

## 7. Implementation Services

7.1 In consideration of your payment of the Implementation Services Fee, we will supply you with the Implementation Services in accordance with the Schedule or any relevant Service Order.

7.2 Prior to us supplying the Implementation Services, you agree to:

- (a) make a backup of any relevant data in your Systems which is to be the subject of, or to be used in the performance of, the Services;
- (b) make a written note or make a backup of any configuration settings or information stored in your Systems;
- (c) make a plan to restore your Systems in the event that they are corrupted or lost;
- (d) notify any relevant parties of any planned outages or downtime necessary for the performance of the Implementation Services;
- (e) provide us with all information that is within your knowledge in relation to your System which would be reasonably necessary for us to know in order to perform the Implementation Services; and
- (f) where the equipment in your System is a computer, download and install any available:
  - (1) security and protection updates for the operating system you use; and
  - (2) updates to virus checking and other computer protection software you use.

7.3 You acknowledge and agree that not undertaking your obligations under clause 7.2 may impact on the results or the performance of the Services, and we will not be liable to you for any Liability to the extent caused or contributed to by your failure to comply with clause 7.2.

7.4 This clause 7 will survive the termination or expiry of this Agreement.

## 8. Support Services

8.1 In consideration of your payment of the Support Services Fee, we will supply you with the Support Services in accordance with the Schedule or the relevant Service Order.

8.2 In order for you to receive the Support Services, you or your Authorised Users must place a request by email, by logging a request via our Service Desk or by logging a request via our portal (Support Request).

8.3 Where set out in the Schedule or where we have agreed as part of a Service Order to provide onsite Support Services, we will send one or more of our Personnel (the Provided Personnel) to your Premises on the agreed days and during the agreed hours, and you agree:

- (a) that you are responsible for coordinating, supervising and instructing the Provided Personnel's performance of the Support Services while they are on your Premises;
- (b) to provide the Provided Personnel with access to any Systems necessary to perform the Support Services;
- (c) to provide the Provided Personnel with a safe working environment, free from harm;
- (d) to comply with all applicable occupational, health and safety Laws and provide the Provided Personnel with a comprehensive safety induction for the Premises where the Provided Personnel are providing the Support Services; and
- (e) to have adequate insurance to cover:
  - (1) loss or damage to your property or the property of any other persons which may be operated, used or handled by the Provided Personnel;
  - (2) death or personal injury (to your Personnel or any other person) caused or contributed to or by the Provided Personnel while providing Support Services; and
  - (3) all other insurances as may be required by Law.

8.4 We will use our make the Support Services available to you during the Term, and in accordance with the Service Levels.

8.5 Unless otherwise agreed, support under this Agreement is not to be used to support any other products or services and does not include training, installation of software or hardware, software development or the modification, deletion or recovery of data or any on-site services.

8.6 You agree to the reasonable usage of the Support Services. Where we consider your usage of the Support Services to be unreasonable, or unreasonably above average (compared with our other customers):

- (a) we agree to notify you in writing of our concerns; and
- (b) following your receipt of such notice, the Parties will use all reasonable endeavours to work together to resolve the matter.

8.7 If:

- (a) we have provided you with the notice in accordance with clause 8.6(a); and
- (b) the Parties are unable to resolve the matter pursuant to clause 8.6(b),

we may (at our discretion):

- (c) adjust our response time accordingly; and/or

- (d) vary the Fees to reflect your increased use of our limited resources, effective on and from us giving you written notice of the new Fees; or
- (e) terminate this Agreement by giving 30 days' notice in writing to you, in which case clause 37.2 will apply.

## 9. Back-Up Services

9.1 In consideration of your payment of the Back-Up Services Fee, we will supply you with the Back-Up Services in accordance with the Schedule or the relevant Service Order.

9.2 You agree that we provide the Back-Up Services using our Personnel. Our Personnel may perform maintenance and upgrades at any time and from time to time. Where:

- (a) you have engaged us to provide the Infrastructure as a Service, clause 23.2 will apply in respect of maintenance and upgrades; or
- (b) the Back-Up Services are not provided by us directly (for example, where we are reselling a third party's back-up services), then maintenance and upgrades will be subject to the relevant vendor's policies.

9.3 In the event of a failure in the Back-Up Services, we will use commercially reasonable endeavours to restore Your Data that is affected by the failure. However, you acknowledge that there may be situations in which Your Data cannot be recovered or Your Data retained may be out of date. To the maximum extent permitted by law, you agree that this clause 9.3 sets out our entire obligation with respect to disaster recovery and loss of Your Data in connection with the Back-Up Services.

9.4 If you require back-up of anything not expressly listed in the Schedule or a relevant Service Order, it will be dealt with as a Variation in accordance with clause 28.

9.5 When providing Back-Up Services we will record your use of our Back-Up Services, including any extra failure support requested by you and, if at any time, the work we record exceeds the Back-Up Services ordered by you in the Schedule or the current Service Order, we will notify you and such excess services will be dealt with as a Variation in accordance with clause 28.

## 10. Procurement Services

10.1 For the purposes of this clause:

**"Procured Goods"** means those goods which we recommend to you as part of the Procurement Services, as particularised in the Schedule or the relevant Service Order; and

**"Procured Services"** means those services (including any software) which we recommend to you as part of the Procurement Services, as particularised in the Schedule or the relevant Service Order.

10.2 In consideration of your payment of the Procurement Services Fee, we will supply you with the Procurement Services in accordance with the Schedule or the relevant Service Order.

10.3 You acknowledge and agree that the Procurement Services only applies to any Procured Goods or Procured Services explicitly set out in the Schedule or a relevant Service Order.

10.4 During the Term, you authorise us (including our Personnel) to act as your agent for the limited purpose of entering into contracts with suppliers of Procured Goods or Procured Services on your behalf.

10.5 You acknowledge and agree that the Procured Goods and Procured Services are not supplied by us, and to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with the Procured Goods or Procured Services.

10.6 We may provide you with additional terms and conditions that may relate to the Procured Goods or Procured Services. You acknowledge and agree that any such additional terms and conditions are entered into between you and the relevant supplier of the Procured Goods or Procured Services.

10.7 In order for us to perform the Procurement Services, you must provide us with all things reasonably required to perform the Procurement Services, and you agree that:

- (a) Service Orders may not be cancellable once confirmed, even where the Procured Goods or Procured Services may not have been delivered;
- (b) original equipment manufacturers (**OEMs**) for the Procured Goods may change the specifications of the Procured Goods ordered, without notice during a Service Order Term;
- (c) we only supply to business-to-business customers;
- (d) any quotes issued by us are always subject to any OEM fluctuations (for example, vendors may use a \$ base rate that fluctuates); and
- (e) you will need to comply with any end user license agreement (**EULA**) provided by us or an OEM in respect of the Procured Goods or Services.

Financing:

10.8 If the Schedule or the relevant Service Order sets out that the Hardware is being financed, you acknowledge and agree that:

- (a) we may introduce a financier to you in respect of the Hardware;
- (b) you are solely responsible for contracting with the financier in respect of the financing of the Hardware;
- (c) we are not the financier, and any issues or concerns with respect to the financing of the Hardware should be raised with the financier;
- (d) we are not liable for any Liability arising from or in connection with the acts or omissions of the financier, and you waive and release us from any such Liability; and

- (e) you are solely liable for payment of the Procurement Services Fee in respect of the Hardware, regardless of whether financing has been extended to you or not.

Returns:

10.9 You agree to comply with our Returns Policy and Procedures on our website and as may be varied by us from time to time.

10.10 We will facilitate returns of the Hardware in accordance with our Returns Policy and Procedures.

10.11 To the extent there is a Manufacturer Defect, your rights will be in accordance with the Manufacturer's Warranty and clause 14.

10.12 This clause 10 will survive the termination or expiry of this Agreement.

11. IT Security Services

11.1 In consideration of your payment of the IT Security Services Fee, we will supply you with the IT Security Services in accordance with the Schedule or the relevant Service Order.

11.2 As part of the IT Security Services, we may recommend third party software or services in order to assist you with your IT security. We provide no warranty regarding the effectiveness of any third party software or service for IT security purposes and we cannot guarantee that our IT Security Services will be effective in stopping all security threats or attacks.

11.3 The obligations of the Parties with respect to security, privacy and data breaches are set out in clauses 26 and 35. The provision of any IT Security Services does not in any way alter the obligations set out in these clauses.

12. **Acceptance Testing**

12.1 For the purpose of this clause:

"Acceptance Tests" means the tests to determine whether the relevant Services (as set out in the Schedule or the relevant Service Order) meet any specifications for the Services as particularised in this Agreement, or if no specifications or criteria are specified in this Agreement or the relevant Service Order, the criteria, reasonably determined by us, which the Services are to be measured against.

12.2 In relation to the Services to which the Acceptance Tests apply (as set out in the Schedule or the relevant Service Order), we will provide you with access to the Services for the purpose of performing the Acceptance Tests. Within 5 Business Days (or as otherwise set out in the Schedule or the relevant Service Order) of us granting you such access, you agree to:

- (a) notify us of your acceptance of the Services; or
- (b) notify us of your rejection of the Services, which cannot be unreasonably given, and provide us with the reasons for your rejection.

12.3 If you do not notify us of your acceptance or rejection of the Services to which the Acceptance Tests apply within 5 Business Days (or as otherwise set out in the Schedule or the relevant Service Order) of us granting you access to the Services, you agree you will be deemed to have accepted those Services.

12.4 If the Services fail to meet the Acceptance Tests you can:

- (a) accept the Services, and they will be deemed to have passed the Acceptance Tests;
- (b) notify us of the failure; or
- (c) accept the Services on the basis that you will allow us to set a timeframe to amend the error or non-compliance.

12.5 If you notify us of the failure in accordance with clause 12.4(b), we agree to amend the Services and resubmit them to you within a reasonable timeframe in order to re-perform the Acceptance Tests in accordance with clauses 12.2- 12.5.

12.6 If you use the Services in a non-test, live or production environment prior to acceptance, such Services will be deemed to be accepted upon such use.

### 13. Leased Hardware

13.1 In consideration of your payment of the Leased Hardware Fee, we will supply you with the Leased Hardware in accordance with the Schedule or the relevant Service Order.

13.2 Service Orders may not be cancellable once confirmed, even where the Leased Hardware may not have been delivered.

13.3 During the Hardware Rental Period, you agree:

- (a) to ensure that you have any necessary permissions or consents to install and use the Leased Hardware (including any strata or building management consent);
- (b) to comply with our reasonable instructions in relation to the Leased Hardware, including any user manuals or directions for use that we provide to you;
- (c) to not allow anyone to interfere or otherwise tamper with the functioning of the Leased Hardware;
- (d) to protect and maintain the Leased Hardware and keep it in good order and condition;
- (e) to ensure that only trained Authorised Users use the Leased Hardware;
- (f) to not conduct, or commission a third party to conduct, any repairs or maintenance or otherwise tamper with the Leased Hardware, without our prior consent;
- (g) that we have no obligation to provide any Services for, and we provide no warranties in respect to, the Leased Hardware, or any part of the Leased Hardware, to the extent it has been repaired, modified or tampered with by a person other than with our prior consent;

- (h) that you are responsible for any loss, cost, theft, damage, vandalism or destruction of or to the Leased Hardware;
- (i) that no such loss, cost, theft, damage or destruction of or to the Leased Hardware will impair or frustrate any of your obligations under this Agreement (including, without limitation, payment of the Fees);
- (j) unless otherwise agreed between the Parties in writing, on expiry or termination of this Agreement or the Hardware Rental Period, you are responsible for returning all Leased Hardware to us at your cost;
- (k) to ensure that the Leased Hardware is protected from power surges and is located in a suitable physical environment for the operation of the Leased Hardware Period; and
- (l) we may take such steps as may be reasonably necessary to protect or enforce our rights under this clause 13 (including giving us and our Personnel the right to enter your Premises) and you agree to sign such documents and do such things as we may reasonably require in such regard.

13.4 If a Bond is applicable as set out in the Schedule or a Service Order, you agree to pay the Bond in accordance with the Schedule or the Service Order (as applicable), and we will hold the Bond throughout the Term, and this clause 13.4 will apply. You agree:

- (a) that the Bond will be used as a security by us for the performance of any of your obligations, and satisfaction of any of your liabilities, under this Agreement;
- (b) that we may call upon the Bond to satisfy any obligations or liabilities owed by you to us under this Agreement (including payment of any amounts due and payable to us by you under this Agreement);
- (c) that we will have no obligation to provide the Services, until we have received the payment of the Bond in full (if applicable); and
- (d) subject to your compliance with this Agreement, we will refund you the balance (if any) of the Bond within a reasonable time after the expiry or termination of the Term.

### 14. Manufacturer's Warranty

14.1 For the purpose of this clause:

**"Manufacturer Defect"** means a defect in the Hardware that is covered by the manufacturer under the Manufacturer's Warranty; and

**"Manufacturer's Warranty"** means the warranty offered to you by the manufacturer of the Hardware (if any), which is between the manufacturer and you.

14.2 In consideration of your payment of the Hardware Fee, we will supply you with the Hardware in accordance with the Schedule or the relevant Service Order.

14.3 We may pass on to you a Manufacturer's Warranty with respect to the Hardware. Please refer to the relevant Manufacturer's Warranty card provided by the manufacturer of the Hardware.

14.4 You agree that any Manufacturer Defects in the Hardware are covered by the Manufacturer's Warranty alone, and we do not provide any warranty with respect to the Hardware.

14.5 We may sell an extended Manufacturer's Warranty to you and if you elect to purchase it, you must pay us (if we have quoted you for the extended Manufacturer's Warranty) or you may pay the manufacturer directly.

14.6 We will use our reasonable commercial endeavours to assist you in bringing warranty claims to a manufacturer under a Manufacturer's Warranty, however, the Manufacturer Warranty is between you and the manufacturer and we have no obligations to you under the Manufacturer's Warranty.

#### 15. Delivery or Collection of Hardware or Leased Hardware

15.1 We will deliver, or you will collect, the Hardware and/or Leased Hardware, in accordance with the terms as specified in the Schedule or the relevant Service Order.

15.2 If we are to deliver the Hardware and/or Leased Hardware, you agree to pay for the reasonable costs of delivering and/or collecting the Hardware and/or Leased Hardware.

#### 16. Security Interest

16.1 You agree to not create an encumbrance, lien, charge or other interest on or over the Hardware, until you have paid the Hardware Fee in full and/or the Leased Hardware until such time as you pay the Leased Hardware Release Fee in full at the expiration of the Hardware Rental Period (if applicable).

16.2 You agree that we hold a general lien over the Hardware, until you have paid the Hardware Fee in full and/or Leased Hardware until such time as you pay the Leased Hardware Release Fee in full at the expiration of the Hardware Rental Period (if applicable), for the satisfactory performance by you of your obligations under this Agreement.

16.3 This clause 16 will survive termination or expiry of this Agreement.

#### 17. Return of Leased Hardware/Hardware

17.1 We handle returns of the Leased Hardware and Hardware in accordance with our Returns Policy and Procedures [attached to this Agreement at Attachment 2 (as at the Commencement Date)].

17.2 We may update our Returns Policy and Procedures from time to time and we will publish updates on our website.

17.3 You should regularly check our website for changes to our Returns Policy and Procedures.

#### 18. Project Services

18.1 In consideration of your payment of the Project Services Fee, we will supply you with the Project Services in accordance with the Schedule or the relevant Service Order.

18.2 In order for us to perform the Project Services, you must provide us with all things reasonably required to perform the Project Services, including:

- (a) purchasing and providing the hardware and any related components (i.e. cables and instructions);
- (b) providing sufficient space for us to perform the Project Services; and
- (c) providing access to a computer, the internet, email, a phone and/or any information reasonably required by us.

18.3 We will not be liable for any failure to perform the Project Services where the hardware in respect of which we provide the Project Services requires technical support beyond the scope of our obligations due to its age, configuration or implementation, other than where such hardware has been provided by us. In this situation, as part of the Support Services (if applicable), we will work with you to proactively identify appropriate replacement solutions.

18.4 If, for any reason, there is any change at all to the Project Services (including where there is an urgent or last minute change), such changes will be considered a Variation or a deemed Variation in accordance with clause 28.

18.5 If the Project Services are cancelled by you with less than 48 hours' notice, we reserve the right to charge you for the full Project Services Fee.

#### 19. Resources Services

19.1 In consideration of your payment of the Resources Services Fee, we will supply you with the Resources Services in accordance with the Schedule or the relevant Service Order.

19.2 For the purposes of the Conduct Regulations, we act as an employment business in relation to the introduction and supply of Resource/s pursuant to this Agreement.

19.3 In the provision of the Resources Services, we agree to:

- (a) comply with the Immigration Asylum and Nationality Act 2006, the Immigration Act 2016 and other relevant UK legislation or equivalent legislation in the relevant jurisdiction as well as any regulations or relevant codes of practice regarding the reporting of labour movements, concealed employment and the employment of foreign workers;
- (b) provide details of the Resource to you in advance of the Service Order Commencement Date, including the Resource's:
  - (1) identity;

- (2) experience, training, qualifications and authorisations necessary for the performance of the Resources Services; and
- (3) any other details as set out in the Service Order;
- (c) take instructions from your management team only, in relation to the Resource;
- (d) procure that the Resource complies with your reasonable rules and policies (**Client Policies**), provided that you provide a copy of the Client Policies to us; and
- (e) hold professional indemnity insurance during Service Order Term.

19.4 You warrant and agree:

- (a) to comply with our reasonable instructions;
- (b) to provide us and the Resource with reasonable, convenient and safe access to your Premises and Systems to supply the Resources Services, and at the times agreed between the Parties;
- (c) to comply with all health and safety laws, and to provide the Resource with access to the Premises as is reasonably necessary for the Resource to provide the Resources Services, free from harm or risk to health and safety;
- (d) to inform us immediately where there is any work, health and safety incident relating to the Resource, and allow us access to the Premises (if relevant) to assess the incident;
- (e) properly supervise the Resource;
- (f) ensure that you do not pay any remuneration or expenses in respect of the Resource other than via us;
- (g) ensure that all discussions concerning contractual changes or termination are between you and us only, and not between you and the Resource; and
- (h) comply with all relevant legal requirements which are binding on you, and to provide us with such information as we may request to enable us to do likewise.

19.5 You agree to inform us immediately in writing if you reasonably believe that the Resource is unsuitable for the Resources Services, or if you become aware of any matter that makes it untenable for the Resource to provide Resource Services to you, setting out the reasons why the Resource is unsuitable. We will review your reasons for requesting the replacement of a Resource and investigate further if required. Where the Parties reasonably agree that a Replacement Resource is required, we will use our reasonable endeavours to appoint a Replacement Resource as soon as possible.

19.6 You acknowledge and agree that for various reasons, a Resource may not be able to perform the Resource Services. Where a Resource is unable to perform the Resource Services for more than 10 consecutive Business Days, we will use our reasonable endeavours to find a Replacement Resource.

19.7 Where a Replacement Resource cannot be found within 2 weeks of the Parties agreeing that a Replacement Resource

is required, either Party may terminate the Resource under a Service Order.

19.8 Unless a different notice period is set out in a Service Order, where you wish to cancel the provision of a Resource under a Service Order, you must provide us with written notice of cancellation at least 5 Business Days' prior to the intended start date of the Resource (as set out in a Service Order or as otherwise agreed between the Parties). Where you provide us with less than 5 Business Days' notice or where you do not provide us with written notice of your cancellation, you will be charged a cancellation fee (as set out below) according to when written notice is received by us relative to the intended start date of the Resource (**Cancellation Fee**):

Notice Period	Cancellation Fee
3-5 Business Days	50% of the Resources Services Fee attributable to the cancelled Resource, for the duration of the Resources' agreed assignment period.
1-2 Business Days	75% of the Resources Services Fee attributable to the cancelled Resource, for the duration of the Resources' agreed assignment period.
Less than 1 Business Day	100% of the Resources Services Fee attributable to the cancelled Resource, for the duration of the Resources' agreed assignment period.

The Cancellation Fee will be invoiced to you at any time after your cancellation, and you will be required to pay the cancellation fee to us within 30 days of invoice. You agree that the Cancellation Fee is a fair and reasonable estimate of our losses caused by your cancellation. The Cancellation Fee will not be payable by you where you terminate this Agreement pursuant to clause 37.1.

19.9 You agree that the cancellation of one Resource under a Service Order will not affect the cancellation of other Resources under a Service Order, and will not automatically terminate a Service Order.

19.10 You agree to sign a time sheet verifying the number of hours worked by the Resource during a particular week. If you are unable to sign a time sheet produced for authentication by the Resource because you dispute the hours claimed, you agree to inform us as soon as is reasonably practicable and agree to co-operate fully and in a timely fashion with us to enable us to establish what hours, if any, were worked by the Resource. Failure to sign the time sheet does not absolve you of your obligation to pay us the Fees in respect of the hours actually worked. You agree that you will not withhold any payment of the Fees on the basis that you are dissatisfied with the work performed by the Resource.

19.11 You acknowledge and agree that the Resource will be solely under your instruction and day-to-day management when performing the Resources Services.

20. **Introduction Fee for Resources**

20.1 If you (or a company in your Group) wish to employ, contract or directly or indirectly engage (such as through a personal services company) the Resource, you agree to inform us immediately, and pay to us a fee of 30% of the equivalent full-time annual basic salary of the Resource, payable to us within 14 days of you engaging the Resource, where you engage the Resource within 6 months of the termination of a Service Order (the Introduction Fee).

20.2 The Introduction Fee will not be payable by you if you give us written notice that you intend to continue the Services with us for a further period of 8 weeks or more after the termination of a Service Order (Extended Assignment) before you engage the Resource in accordance with clause 20.1.

20.3 Where you decide (in accordance with clause 20.2) to have the Resource supplied by us for the Extended Assignment:

- (a) the Price payable by you during the Extended Assignment shall be the Price paid by you immediately before you gave notice of election for the Extended Assignment;
- (b) at the end of the Extended Assignment, you may engage the Resource (except through another Employment Business) without paying the Introduction Fee; and
- (c) if you choose an Extended Assignment, but engage the Resource before the end of the Extended Assignment, the Introduction Fee may be charged by us, reduced proportionately to reflect the amount of the Price relating to the Extended Assignment paid for by you.

20.4 Clause 20.2 does not apply where you engage the Resource under another Employment Business.

20.5 For the purpose of this clause 20, Employment Business has the meaning given to it in the Conduct Regulations.

20.6 This clause 20 will survive the expiry or termination of this Agreement.

## 21. IT Storage, Configuration and Logistics Services

21.1 In consideration of your payment of the IT Storage, Configuration and Logistics Services Fee, we will supply you with the IT Storage, Configuration and Logistics Services in accordance with the Schedule or the relevant Service Order.

21.2 You agree:

- (a) the hardware or goods the subject of the IT Storage, Configuration and Logistics Services will be stored at our or our Personnel's warehouses;
- (b) to accept delivery and make available for collection the hardware or goods the subject of the IT Storage, Configuration and Logistics Services at times agreed between the Parties or as notified by us to you; and

(c) to provide us with information we reasonably request in order for us to configure the hardware or goods the subject of the IT Storage, Configuration and Logistics Services.

## 22. Connectivity Services

22.1 In consideration of your payment of the Connectivity Services Fee, we will supply you with the Connectivity Services in accordance with the Schedule or the relevant Service Order.

22.2 You agree:

- (a) to comply with our reasonable instructions; and
- (b) to provide us and our Personnel with reasonable, convenient and safe access to your Premises and Systems to supply the Connectivity Services, and at the times agreed between the Parties;

22.3 During the Term, you authorise us (including our Personnel) to act as your agent for the limited purpose of entering into contracts with suppliers of goods the subject of the Connectivity Services on your behalf.

22.4 You acknowledge and agree that:

- (a) internet lines are not supplied by us;
- (b) internet lines may be subject to third party outages and third party service levels or exclusions; and
- (c) we do not monitor or provide support in relation to any internet lines, unless you have expressly engaged us to provide such support in a Service Order,

and to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with service issues of your internet provider.

## 23. Infrastructure as a Service

23.1 In consideration of your payment of the Infrastructure as a Service Fee, we will supply you with the Infrastructure as a Service in accordance with the Schedule or the relevant Service Order.

23.2 You agree that we may perform maintenance and upgrades at any time and from time to time. In relation to:

- (a) standard planned maintenance and upgrades, these will be done during the windows in our patching policy available at [help.techary.com](http://help.techary.com) and we notify to you, and we will provide you with at least 48 hours' notice; and
- (b) emergency changes, patches and updates, we will use our reasonable endeavours to provide you with notice of such changes, patches and updates, but sometimes this is not possible.

23.3 The Infrastructure as a Service does not include backup, and it's your responsibility to procure a back-up solution (whether through the Back-Up Services or otherwise).

23.4 In the event of a failure in the Infrastructure as a Service, we will use commercially reasonable endeavours to restore Your Data that is affected by the failure. However, you acknowledge that there may be situations in which Your Data cannot be recovered or Your Data retained may be out of date. To the maximum extent permitted by law, you agree that this clause 23.4 sets out our entire obligation with respect to disaster recovery and loss of Your Data in connection with the Infrastructure as a Service.



- 23.5 If you require hosting of anything not expressly listed in the Schedule or a relevant Service Order, it will be dealt with as a Variation in accordance with clause 28.
- 23.6 The level of coverage under the Infrastructure as a Service and the pricing for the Infrastructure as a Service is set out in the Schedule or in the Service Order. If you need to increase the performance or specification of the Infrastructure as a Service, you may need to purchase increased performance or specification instances, which will be dealt with through the Variations clause in clause 28. The Infrastructure as a Service may be based on a per consumption basis, such that they Infrastructure as a Service Fees may be unlimited.
24. **Service Levels**
- 24.1 This clause will only apply where and to the extent that the Schedule or a Service Order indicates that Service Levels apply.
- 24.2 We will endeavour to provide the relevant Services to which the Support Services apply (as particularised in the Schedule or the relevant Service Order) in accordance with the Service Levels.
- 24.3 Subject to the terms of this Agreement, if we fail to meet any Service Level, then you may recover the applicable credit amount specified in **Attachment 1** (or in the relevant Service Order) as a refund against the Fees that you have paid (or that are payable).
- 24.4 Service Credits will not be payable, and we will not liable to you, for any Service Level failure caused or contributed to by:
- (a) Scheduled or Emergency Maintenance;
  - (b) any act or omission by you (including your Personnel) or any Authorised User;
  - (c) a Force Majeure Event; and/or
  - (d) a Third Party Input.
- 24.5 You acknowledge and agree that Service Credits will be your sole and exclusive remedy against us arising from or in connection with our failure to meet the Service Levels.
25. **Security**
- Subject to the terms of this Agreement, we will establish and maintain appropriate, reasonable technical and organisational security measures in accordance with good industry practice to keep Your Data secure.
26. **Security Incidents**
- 26.1 If either Party becomes aware of or reasonably suspects that a security incident has occurred arising from our provision of the Services, such that Your Data has or may have been compromised (for example, unauthorised access) (each a **Security Incident**), that Party must promptly notify the other Party and we agree to, within a reasonable time:
- (a) conduct an investigation to determine whether a Security Incident has occurred, and where one has, the cause and impact of it on Your Data; and
  - (b) where a Security Incident is deemed to have occurred, we will work on the Security Incident (to the extent that this is operationally, commercially and technically feasible), however, we provide no guarantees that we will be able to remediate the Security Incident.
- 26.2 You agree that we may suspend the Services where a Security Incident has or may have occurred and this is considered necessary or prudent (as determined by us, at our reasonable discretion) to address or deal with the Security Incident.
- 26.3 We will bear our costs in conducting any investigation or remediation required under this clause, unless the incident triggering the Security Incident was caused or contributed to by you (including your Personnel or any Authorised User), in which case, you will be liable for those costs reasonably and necessarily incurred by us arising from the Security Incident.
27. **Data and Data Recovery**
- 27.1 We will, for the purposes of disaster recovery, endeavour to maintain a fully replicated version of Your Data in a UK location that is physically separate from the location at which Your Data is stored or processed for normal production purposes.
- 27.2 Where there is a loss of or damage to Your Data, we will use our best endeavours to reload and, if reload is not possible, reconstitute or restore Your Data saved at the last back-up using industry standard data restoration techniques, the cost of which will be borne:
- (a) by us, if we are responsible for the loss of or damage to Your Data; or
  - (b) otherwise by you.
28. **Variations**
- 28.1 You may request a variation or change to the Services, including the timing for the provision of the Services, (**Variation**), by providing written notice (including by email and our online portal) to us, with details of the Variation (**Variation Request**). We will not be obliged to comply with a Variation Request unless we accept the Variation Request in writing. The Parties agree to comply with this Agreement as varied by any Variation Request accepted in writing.
- 28.2 Subject to clause 5.3, if we consider that any instruction or direction from you constitutes a Variation, then we will not be obliged to comply with such instruction or direction unless a Variation Request has been issued and accepted by us in accordance with clause 28.1.
- 28.3 If:
- (a) as part of the Services, we are procuring any licences for you, and there are increases in the costs of licences as a result of increases imposed by the licensor (for example, Microsoft), you agree we can pass on such increases to you in full; and
  - (b) the Services are priced based on the number of Authorised Users using the Services, and you instruct us (whether in writing or otherwise) to increase the number of Authorised Users (whether following the procedure in clause 5.3 or not), such increase will be priced in accordance with the Fees for the relevant Services,
- and such increases will constitute a deemed Variation.
- 28.4 Any Variation will apply within a reasonable time after our acceptance of your Variation Request or immediately in the case of a deemed Variation, and if applicable, any increase to the Fees will be charged on a pro-rata basis if such increase occurs during the then-current Fee period.
29. **Your Obligations and Representations**
- 29.1 You agree:
- (a) to comply with this Agreement and all applicable Laws;

- (b) to provide all assistance, information, documentation, access, facilities and other things reasonably necessary to enable us to comply with our obligations under this Agreement or at Law;
  - (c) to permit our Personnel to have access to any reasonable computing, office productivity software tools, telecommunication, email and internet facilities necessary for the purposes of supplying the Services;
  - (d) to provide us and our Personnel with reasonable, convenient and safe access to your Premises and Systems to the extent reasonably necessary in order for us to supply the Services, and at the times agreed between the Parties;
  - (e) to ensure all information provided to us is kept up-to-date and the email address you provide is valid and regularly checked;
  - (f) to make any changes to your Systems, such as System upgrades, that may be required to support the delivery and operation of any Services;
  - (g) to ensure that any Systems used in connection with the Services have all necessary approvals and comply with all Laws;
  - (h) that you have reviewed and understand the terms of this Agreement (including our Privacy Policy), and that you (including your Personnel and Authorised Users) will use the Services in accordance with them;
  - (i) other than as expressly permitted by this Agreement, not cause or permit any software or hardware provided or managed as part of the Services to be altered, repaired, serviced or moved except by the authorised seller, an authorised repairer, the manufacturer or persons approved by us;
  - (j) to notify us of any breach or suspected breach of this Agreement by you (including your Personnel or an Authorised User), within 48 hours of becoming aware or any such breach or suspected breach; and
  - (k) that you are responsible for all Authorised Users and other users within your organisation or within your control using the Services, including your Personnel.
- 29.2 You acknowledge and agree that:
- (a) the technical processing and transmission of the Services, including Your Data, may be transferred unencrypted and involve transmissions over various networks; and changes to conform and adapt to technical requirements of connecting networks or devices;
  - (b) unless we otherwise agree, the Services are provided to you and your Authorised Users, solely for your (and your Authorised Users’) benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties without our prior written consent;
  - (c) any information, advice, material, work and services (including the Services) provided by us under this Agreement does not constitute legal, financial, merger, due diligence or risk management advice;
  - (d) you will be responsible for the use of any part of the Services by your Authorised Users and any other person you provide with access to the Services, and you must ensure that no person uses any part of the Services:
    - (1) to break any Law or infringe any person’s rights (including Intellectual Property Rights);
    - (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
    - (3) in any way that damages, interferes with or interrupts the supply of the Services; and
  - (e) you will not alter or modify the Services in any way that is not contemplated by the purposes of the Services.
- 30. Fees and Payment**
- 30.1 You agree to pay us the Fees, and any other amount payable to us under this Agreement, in accordance with the Payment Terms.
- 30.2 For the avoidance of doubt, if as part of the Services we are procuring any licences for you, and there are increases in the costs of licences as a result of increases imposed by the licensor (for example, Microsoft), then we may pass on such increases to you, and such increases will constitute a deemed Variation under clause 28.3.
- 30.3 To the extent that we offer payment to you on a credit basis, we may carry out credit checks, and you agree to provide us or our Personnel with all information and documents necessary to carry out such checks. Credit may be subject to change if your credit position changes during the Term.
- 30.4 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):
- (a) after a period of 30days, cease providing the Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so (including reasonable legal fees, debt collector fees and mercantile agent fees); and/or
  - (b) charge interest at a rate equal to 4% above the Bank of England’s base rate, from time to time, but at 4% a year for any period when that base rate is below 0%, per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.
- 30.5 If applicable, you will not be entitled to any part of the Services until the Deposit and/or the Bond has been paid in full.
- 30.6 If the Services are to paid up front, you will not be entitled to any part of the Services until the Fees have been paid in full.
- 30.7 Unless otherwise specified in a Service Order, you agree that we may vary the Fees on each annual anniversary of the Commencement Date by providing 60 days’ written notice to you of such variation. Where we provide this notice, the new Fees will take effect on and from the anniversary of the Commencement Date. If you do not agree to any Fee variation:
- (a) you agree to notify us in writing within 30 days of the Fee variation coming into effect; and
  - (b) following receipt of such notice by us, the Parties will use all reasonable endeavours to work together to resolve the matter.
- 30.8 If:

- (a) you have provided us with the notice in accordance with clause 30.7(a); and
- (b) the Parties are unable to resolve the matter pursuant to clause 30.7(b),

you may elect to terminate the Agreement prior to the end of the Initial Term or the then Renewal Period in accordance with the notice period in the Schedule, and in which case, clause 37.2 will apply.

30.9 To the maximum extent permitted by law, there will be no refunds or credits for any unused Services (or part thereof).

30.10 You agree that we may set-off or deduct from any monies payable to you under this Agreement, any amounts which are payable by you to us (whether under this Agreement or otherwise).

### 31. Warranties

31.1 We agree:

- (a) that we are properly constituted and have the right and authority to enter into this Agreement;
- (b) that we will use reasonable efforts to ensure all of our obligations under this Agreement will be carried out by suitably competent and trained Personnel and in an efficient and professional manner;
- (c) that all pre-existing Intellectual Property Rights in the Services (with the exception of the property rights in any Third-Party Inputs) will be owned, held or licensed by us;
- (d) that the provision of the Services does not and will not infringe any other person's Intellectual Property Rights; and
- (e) that the Services will operate and be provided in accordance with this Agreement.

31.2 You represent, warrant and agree that:

- (a) you will provide us with any information that we require in order to provide the Services to you;
- (b) you have all hardware, software and services which are necessary to access and use the Services and they meet the Minimum Requirements (other than those required to be provided by us under this Agreement);
- (c) there are no legal restrictions preventing you from entering into this Agreement;
- (d) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete and that we will rely on such information and documentation in order to provide the Services;
- (e) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes) or any Third Party Inputs, unless expressly stipulated in this Agreement;
- (f) you are not and have not been the subject of an Insolvency Event;
- (g) if applicable, you hold a valid company number which has been advised to us; and
- (h) if applicable, you are registered for VAT purposes.

### 32. Intellectual Property

32.1 This clause 32 applies to the extent that a Service Order does not particularise an alternative position with respect to the ownership and licensing of Intellectual Property Rights.

Our Intellectual Property Rights

32.2 As between the Parties, you acknowledge and agree that we own all Intellectual Property Rights in:

- (a) Our Materials;
- (b) Our Improvements;
- (c) Analytics; and
- (d) any Feedback,

and as between the Parties, these Intellectual Property Rights will at all times vest, or remain vested, in us. Nothing in this Agreement constitutes a transfer or assignment of such Intellectual Property Rights. To the extent that ownership of these Intellectual Property Rights does not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights.

32.3 In the use of any Intellectual Property Rights in connection with this Agreement, you agree that you must not (and you must ensure that your Personnel and any Authorised Users do not) commit any Intellectual Property Breach. Where you reasonably suspect that such a breach may have occurred, you must notify us immediately.

32.4 You agree that we may use Feedback in any manner which we see fit (including to develop new features) and no benefit will be due to you as a result of any use by us of any Feedback.

### Your Intellectual Property Rights

32.5 As between the Parties, you will continue to own all Intellectual Property Rights in Your Materials and Your Improvements and the New Materials.

32.6 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Your Materials and Your Improvements and the New Materials, solely for the purposes for which they were developed and for the performance of our obligations under this Agreement, and as otherwise contemplated by this Agreement.

32.7 If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of those Moral Rights.

### Your Data

32.8 As between the Parties:

- (a) Your Data is and will remain your property; and
- (b) you retain any and all rights, title and interest in and to Your Data, including all copies, modifications, extensions and derivative works.

32.9 You grant us a limited licence to copy, transmit, store, back-up and/or otherwise access or use Your Data during the Term (and for a reasonable period after the Term):

- (a) to supply the Services to you (including to enable you and your Personnel to access and use the Services), and otherwise perform our obligations under this Agreement;

- (b) to diagnose problems with the Services;
  - (c) to enhance and otherwise modify the Services;
  - (d) to perform Analytics;
  - (e) to develop other services, provided we de-identify Your Data; and
  - (f) as reasonably required to perform our obligations under this Agreement.
- 32.10 You represent, warrant, acknowledge and agree that:
- (a) you have obtained all necessary rights, releases and permissions to provide or have Your Data provided to us and to grant the rights granted to us in this Agreement;
  - (b) Your Data (and its transfer to and/or use, collection, storage or disclosure by us as contemplated by this Agreement) does not and will not violate any Laws (including those relating to export control and electronic communications) or the rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity; and
  - (c) the operation of the Services is reliant on the accuracy and completeness of Your Data, and the provision by you of Your Data that is inaccurate or incomplete may affect the use, output and operation of the Services.
- 32.11 This clause 32 will survive termination or expiry of this Agreement.
- 33. Analytics**
- 33.1 You acknowledge and agree that we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymised format (**Analytics**), for our internal purposes.
- 33.2 We, and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content used or provided in connection with the Analytics, including all Intellectual Property Rights in the foregoing.
- 33.3 We may use and disclose to our service providers anonymous data about your access and use of the Services for the purpose of helping us improve the Services. Any such disclosure will not include details of your or any Authorised User's, identity or personal data.
- 34. Confidential Information**
- 34.1 Each Receiving Party agrees:
- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;
  - (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
  - (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.
- 34.2 The obligations in clause 34.1 do not apply to Confidential Information that:
- (a) is required to be disclosed in order for the Parties to comply with their obligations under this Agreement;
  - (b) is authorised to be disclosed by the Disclosing Party;
  - (c) is in the public domain and/or is no longer confidential, except as a result of a breach of this Agreement; or
  - (d) must be disclosed by Law or by a regulatory authority, including under subpoena.
- 34.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 34. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 34.
- 34.4 This clause 34 will survive the termination or expiry of this Agreement.
- 35. Privacy**
- 35.1 The Parties each agree to comply with the Data Protection Legislation.
- 35.2 Without limiting clause 35.1, you must ensure that:
- (a) you have collected, used, stored and otherwise dealt with Your Data in accordance with the Data Protection Legislation; and
  - (b) we are capable of collecting, using, storing and otherwise dealing with Your Data, in the manner contemplated by this Agreement, without infringing any third party rights or violating the Data Protection Legislation.
- 36. Limitations on liability**
- 36.1 Nothing in this Agreement limits any Liability which cannot legally be limited, including Liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
  - (d) defective products under the Consumer Protection Act 1987.
- 36.2 Despite anything to the contrary, to the maximum extent permitted by law:
- (a) neither Party will be liable for Consequential Loss;
  - (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by the other Party to mitigate its loss; and
  - (c) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to us resupplying the Services to you or, in our sole discretion, to us repaying you the amount of the Fees paid by you to us in respect of the supply of the relevant Services to which the Liability relates, and in any event, our aggregate liability for all Liability arising from or in connection with this Agreement would not exceed 50% of the total Fees paid by you under this Agreement.
- 36.3 You agree to indemnify us for any Liability we incur from or in connection with:

- (a) any breach by you of our Intellectual Property Rights or those of a third party;
- (b) Your Data; and
- (c) any breach by you of clause 34.
- 36.4 This clause 36 will survive the termination or expiry of this Agreement.
37. **Termination**
- 37.1 This Agreement or any Service Order will terminate immediately upon written notice by a Party (Non-Defaulting Party), if:
- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement or the Service Order and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party is unable to pay its debts as they fall due.
- 37.2 Upon expiry or termination of this Agreement or any Service Order:
- (a) we will immediately cease providing the Services (or the Services under the relevant Service Order);
- (b) we will provide you with a copy of all Your Data in our possession. After we provide such copy of Your Data, we may, at our sole discretion, delete or destroy Your Data;
- (c) you agree that any payments made by you to us are not refundable to you;
- (d) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;
- (e) to the maximum extent permitted by law, you will pay us for any third party charges or expenses to which we are committed, including without limitation any charges imposed on us by such third parties arising from the cancellation. You agree that this represents a genuine pre-estimate of our loss as a result of termination of this Agreement and/or any Service Order;
- (f) if applicable, where you have not paid the Leased Hardware Release Fee you agree to promptly return all Leased Hardware to us or grant us such rights of access to the Premises in order for us (including our Personnel) to immediately recover or repossess the Leased Hardware;
- (g) if applicable, where you have not paid the Leased Hardware Release Fee you agree that any failure to return or allow us to collect any Leased Hardware within 30 days of the date of termination or expiry of this Agreement or the relevant Service Order or to return the Leased Hardware to us in working condition, other than usual wear and tear, will require you pay to us, as a debt due and immediately payable, our reasonable costs in replacing or repairing the Leased Hardware (as applicable); and
- (h) upon request by us, you agree to promptly return (where possible), or delete or destroy (where not possible to return), any information, documentation or Intellectual Property owned by us that is in your possession or control, subject to clause 32.
- 37.3 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.
- 37.4 Where this Agreement is terminated by us pursuant to clause 37.1 you agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination, (including reasonable legal fees, debt collector fees and mercantile agent fees).
- 37.5 Where this Agreement is terminated in accordance with this clause 37, any current Service Orders will survive termination and will continue until the expiry of the Service Order, unless the Service Order is expressly terminated by a Party in accordance with this clause 37.
- 37.6 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.
- 37.7 This clause 37 will survive the termination or expiry of this Agreement.
38. **VAT**
- 38.1 All amounts payable by a Party under this Agreement are inclusive of amounts in respect of value added tax chargeable from time to time (**VAT**), unless otherwise stated. Where any taxable supply for VAT purposes is made under this Agreement by a Party to the other Party, the paying Party agrees, on receipt of a valid VAT invoice from the payee, to pay to the payee such additional amounts in respect of VAT as are chargeable on the relevant supply at the same time as payment is due.
- 38.2 Where a value-added tax in your own country is applicable, the Fees will be exclusive of such value-added tax. You are responsible for all other taxes, levies or duties imposed by taxing authorities in your own country, and you shall be responsible for the payment of them. We have no responsibility to them on your behalf.
39. **General**
- 39.1 **Access:** The Services may be accessed in the UK and overseas. We make no representation that the Services comply with the Laws (including Intellectual Property Laws) of any country outside of the UK. If you access the Services from outside the UK, you do so at your own risk and you are responsible for complying with the Laws in the place you access the Services.
- 39.2 **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.
- 39.3 **Assignment:** Subject to clause 39.4, a Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 39.4 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.
- 39.5 **Contracts (Rights of Third Parties) Act 1999:** Notwithstanding any other provision of this Agreement, nothing in this

- Agreement confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.
- 39.6 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.
- 39.7 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask The Law Society of the United Kingdom to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 39.8 **Email:** You agree that we are able to send electronic mail to you and receive electronic mail from you. To the maximum extent permitted by law, you release us from any Liability you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 39.9 **Entire agreement:** This Agreement contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in this Agreement, and this Agreement supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 39.10 **Force Majeure:** A Party will not be liable for any delay or failure to perform its obligations under this Agreement if and to the extent such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.
- 39.11 **Further assurance:** Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and their obligations under it.
- 39.12 **Governing law:** This Agreement is governed by the laws of England and Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in England and Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 39.13 **Illegal Requests:** We reserve the right to refuse any request for or in relation to any Services that we deem inappropriate, unethical, unreasonable, illegal or otherwise non-compliant with this Agreement.
- 39.14 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 39.15 **Online execution:** This Agreement may be executed by means of such third party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.
- 39.16 **Publicity:** With your prior written consent, you agree that we may advertise or publicise the broad nature of our provision of the Services to you, including on our website or in our promotional material.
- 39.17 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 39.18 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.
40. **Definitions**
- In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Schedule or the Service Order or the body of this Agreement, and:
- Agreement** means these terms and conditions, all schedules (including the Schedule), annexures and attachments included, or referred to, in this agreement. In the context of a Service Order, "Agreement" has the same meaning but includes the terms of the Service Order.
- Attachment** means the attachment to this Agreement.
- Authorised User**, if applicable, means a user permitted to access and use the Services, as further particularised in the Schedule or a Service Order.
- Business Day** means a day on which banks are open for general banking business in England, excluding Saturdays, Sundays and public holidays.
- Computing Environment** means your computing environment including all hardware, software, information technology and telecommunications services and Systems.
- Conduct Regulations** means *The Conduct of Employment Agencies and Employment Businesses Regulations 2003*.
- Confidential Information** includes information which:
- is disclosed to the Receiving Party in connection with this Agreement at any time;
  - is prepared or produced under or in connection with this Agreement at any time;
  - relates to the Disclosing Party's business, assets or affairs; or
  - relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,
- whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that your obligation to pay us the Price under this Agreement will not constitute “Consequential Loss” for the purposes of this definition.

**Data Protection Legislation** means the laws and regulations applicable to the processing of Personal Data by the Parties in connection with this Agreement, including without limitation:

- (a) the Data Protection Act 2018 (including the GDPR as incorporated into United Kingdom domestic law pursuant to section 3 of the European Union (Withdrawal) Act 2018 (**UK GDPR**)); and
- (b) if applicable, the GDPR and the EU e-Privacy Directive (Directive 2002/58/EC).

**Disclosing Party** means the party disclosing Confidential Information to the Receiving Party.

**Expenses** means any disbursements, including travel and accommodation costs and third party costs, reasonably and directly incurred by us and approved in advance by you for the purpose of the provision of the Services.

**Feedback** means any idea, suggestion, recommendation or request by you or any of your Personnel or Authorised Users, your customers, whether made verbally, in writing, directly or indirectly, in connection with the Services.

**Fees** means the price set out in the Schedule or the relevant Service Order, as adjusted in accordance with this Agreement, and includes all Expenses and the Deposit, if any.

**Force Majeure Event** means any event or circumstance which is beyond a Party’s reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

**GDPR** means the EU General Data Protection Regulation 2016/679.

**Group** means in respect of a Party, the Party itself, any body corporate which is the Party’s holding company or subsidiary, and any other body corporate which is a subsidiary of that holding company.

**Harmful Code** means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alternation, denial of service, unauthorised access to or disclosure, destruction or corruption of information or data.

**Insolvency Event** means where if a Party takes any step or action (or any analogous step or action) in connection with:

- (a) its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring);
- (b) applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986;
- (c) being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring); or
- (d) having a receiver appointed to any of its assets or ceasing to carry on business,

or if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

**Intellectual Property** means any copyright, registered or unregistered designs, patents or trade mark rights, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Breach** means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights, including any Intellectual Property Rights of third parties), including using or exploiting our Intellectual Property for purposes other than as expressly stated in this Agreement (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Laws** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with this Agreement or the provision of the Services.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), misrepresentation, restitution, indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

**Moral Rights** means any moral rights, including those conferred by Chapter IV of the Copyright, Designs and Patents Act 1988.

**New Materials** means all Intellectual Property developed, adapted, modified or created by either Party or their respective Personnel in the provision of the Services, but excludes Our Materials, Our Improvements, Your Data and Your Materials.

**Our Improvements** means any development, modification, adaptation or improvement of Our Materials made by or on behalf of either Party (or any of their respective Personnel), or

in respect of which Intellectual Property Rights are acquired by, either Party during the Term.

**Our Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services that we may provide to you under this Agreement, and which may contain material which is owned by or licensed to us, and is protected by UK and international laws.

**Personal Data** has the meaning given to it in the UK GDPR.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

**Premises** means any premises the subject of the Services.

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party.

**Resource/s** means the worker that we provide to you to perform the Resources Services, as set out in a Service Order.

**Schedule** means the schedule to this Agreement.

**Service Desk** means our ad-hoc information technology support in response to information technology enquiries and issues concerning your business and submitted via a dedicated support email and phone number provided to you.

**Service Order** means an order for the supply of the Services, issued by us in accordance with clause 4, and includes any Statement of Work issued under a service order in accordance with clause 4.4.

**Services** means the services that we agree to perform under this Agreement, as further particularised in the Schedule or any Service Order.

**Statement of Work** has the meaning given to it in clause 4.4, and includes a 'goods-in' or 'goods-out' request or similar, as may be referred to in a Service Order.

**System** means all hardware, software, networks, telecommunications and other IT systems used by a Party from time to time, including a network.

**Third Party Inputs** means third parties or any goods and services provided by third parties, including hardware, internet service providers, internal systems, customer relationship management software, email providers, cloud storage systems, or other third party systems which the provision of the Services may be contingent on, or impacted by.

**Your Data** means the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you, your Personnel and Authorised Users into the Services or stored by or generated by your use of the Services, including any Personal Information collected, used,

disclosed, stored or otherwise handled in connection with this Agreement. Your Data does not include (i) the Analytics, or (i) any data, information or materials that we generate (or that is generated on our behalf) in connection with the Services and that is not provided to you or that you do not have access to.

**Your Improvements** means any development, modification, adaptation or improvement of Your Materials or any New Materials made by or on behalf of either Party (or any of their respective Personnel), or in respect of which Intellectual Property Rights are acquired by, either Party during the Term.

**Your Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned or licensed by you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of this Agreement.

#### 41. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words like including and for example are not words of limitation;
- (b) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (c) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (d) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (e) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (f) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (g) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (h) a reference to time is to local time in England; and
- (i) a reference to £ or pounds refers to the currency of the UK from time to time.