



MASTER SERVICES AGREEMENT (the "Agreement")

BACKGROUND

- (1) AXON-IT.COM LTD, incorporated and registered in England and Wales with company number 04228490, whose registered office is at Equinox House, Clifton Park Avenue, Shipton Road, York, YO30 5PA ("Supplier") is an IT Services provider and value-added reseller in the UK, and has developed and will provide professional and managed services (including CSP Managed Services (as defined in Schedule 2) and goods ("Services").
- (2) The "Client", the name of which is set out in the "Specification" (the document describing the services proposed in response to a request from the Client to the Supplier, wishes to use the Supplier's Services in its business operations.
- (3) The Supplier has agreed to provide, and the Client has agreed to take and pay for, the Services, subject to the terms and conditions of this Agreement.
- (4) Multiple Specifications may be incorporated under this Agreement.

INTERPRETATION

Clause, and paragraph headings shall not affect the interpretation of this Agreement.

A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

A reference to writing or written includes e-mail.

Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

References to Clauses are to the Clauses of this Agreement.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

The parties agree, in consideration of the parties' respective obligations under this Agreement, as follows:

1. ORDER OF PRECEDENCE
- 1.1 In the event of any conflict or inconsistency between the Clauses of this Agreement, the Schedules, any variation, a Licence Agreement (as defined below) and the Specification (including any changes to the Specification), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
 - (a) Any variation to the terms of this Agreement agreed in writing by the Parties from time to time;
 - (b) the Specification;
 - (c) a "Licence Agreement" (a licence agreement that may have to be entered into by the Supplier and/or the Client in respect of Third Party Services (as defined in Clause 16.1) used, which such terms shall

be agreed between the parties) and CSP Agreement (as defined in Clause 3.1(n) to the extent applicable to the Services;

(d) the Schedules to this Agreement; and

(e) the Clauses in this Agreement.

2. SUPPLY OF SERVICES

2.1 Commencing on the date the applicable Specification is signed or such date as mutually agreed between the parties (the "Commencement Date"), the Supplier shall perform the Services as set out in the Specification in accordance with this Agreement. In supplying the Services, the Supplier agrees that:

(a) it shall supply the Services to the Client in accordance with the agreed Specification in all material respects;

(b) it shall determine where the location of the Services shall be delivered unless agreed to in the relevant Specification;

(c) it shall use commercially reasonable endeavours to meet any performance timelines specified under a Specification but any such timelines shall be estimates only and time shall not be of the essence for the performance of the Services;

(d) the Services will be provided using reasonable care and skill; and

(e) it will comply with all applicable laws, statutes, regulations from time to time in force.

2.2 Where the Services include the supply of Goods (as defined in Schedule 3), the provisions of Schedule 3 shall apply.

2.3 The Supplier does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet Services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Whilst the Supplier will use reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, the Supplier cannot guarantee that such events will not occur. Accordingly, the Supplier disclaims any and all liability resulting from or related to such events.

2.4 The Client acknowledges that certain conditions outside of the Supplier's control may adversely impact the ability of the Supplier to perform functions of the Services. Examples of such conditions include but are not limited to:

(a) failure of Client hardware, software or operating system;

(b) partial or full failure of third-party Services; or

(c) network connectivity issues concerning the Supplier's platform or third party servers.

2.5 Either party may request changes to any Specification (in each case, a "Change Request"). Any Change Request shall be made in writing (including email) and sent to the Client Representative (as defined in Clause 14.4) or Supplier Representative (as defined in Clause 14.4), as appropriate and shall set out the change in sufficient detail so as to enable the other party to make a proper assessment of such change. Any agreed to changes shall continue to be subject to this Agreement.

2.6 Neither party shall be required to accept any Change Request made by the other party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.

3. CLIENT'S OBLIGATIONS

3.1 The Client shall:

(a) co-operate with the Supplier in all matters relating to the Services;

(b) provide the Supplier with access to appropriate members of the Client's staff and equipment, (including enabling logons and/or passwords) as such access is reasonably requested by the Supplier,

- in order for the Supplier to perform the Services;
- (c) provide such information, documentation and data as the Supplier may reasonably request in order for the Supplier to perform the Services in a timely manner;
 - (d) use the Services only for lawful purposes and in accordance with this Agreement and not store, distribute or transmit any material through the Services that:
 - (i) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
 - (ii) facilitates illegal activity;
 - (iii) depicts sexually explicit images; and/or
 - (iv) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities.
 - (e) shall remain responsible for the use of the Services under its control, including any use by third parties that the Client has authorised to use the Services.
 - (f) shall not provide the Services to third parties without the prior written consent of the Supplier.
 - (g) ensure it has suitable licences in place for any third party software required (which is not issued by the Supplier) to allow the Supplier and its subcontractors full use in relation to the Services provided;
 - (h) keep secure from third parties any passwords issued to the Client by the Supplier;
 - (i) fully virus-check all data supplied to the Supplier pursuant to this Agreement;
 - (j) permit the Supplier to install the current version of software required to provide the Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
 - (k) maintain and allow the Supplier continuous exclusive global admin access unless set out in the Specification to the Client's relevant Microsoft cloud Services portals for the duration of this Agreement;
 - (l) agree that if, in the course of performing the Services, it is necessary or desirable for the Supplier to access or use any Client owned equipment, Client software or Client data (or which is in the possession of the Client) then it shall where it is able to under the terms of its existing licences grant to Supplier a nonexclusive, royalty free licence, during the term of the Agreement to use the same solely for the purpose of delivering the Services;
 - (m) appoint designated primary contacts who manage any escalation and who shall be the key personnel for the Supplier to co-ordinate with. Further the Client warrants that the designated primary contacts shall have sufficient authority to give instructions on behalf of the Client (including but not limited to adding additional Services) which shall be binding upon the Client if such instructions are agreed by the Supplier;
 - (n) (for procurement of Microsoft products only) adhere to the CSP customer agreement ("CSP Agreement") and Schedule 2, which is a direct agreement between Client and Microsoft and is a condition of Cloud Solution Provider Program that the Client enters into this agreement, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time;
 - (o) where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite, Operations Management Suite or Microsoft 365) the Supplier will be assigned to the cloud subscription/s as the Digital Partner of Record and or Claiming Partner of Record) for a minimum of twelve (12) months from project completion date;
 - (p) in respect of any Microsoft funded services (if applicable), sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that the Client does not return the POE within the seven (7) days' notice period, the Supplier may be entitled to

charge the Client the amounts directly and the Client shall follow the payment terms in this Agreement;

- (q) adhere to the dates scheduled for provision of Services by the Supplier to the Client as stated in the applicable Specification or otherwise agreed between the Parties in writing. In the event the Client wishes to reschedule or cancel the dates for the provision of Services, liquidated damages ("Liquidated Damages") will become payable from the Client to the Supplier on the following basis:
- (i) if dates are changed or cancelled at the Client's request more than fourteen (14) days before the scheduled start date no Liquidated Damages are payable;
 - (ii) if dates are changed or cancelled between seven (7) days and fourteen (14) days before the scheduled start date Liquidated Damages equivalent to fifty percent (50%) of the Fees for the Services to be provided at that time will be payable;
 - (iii) if dates are changed or cancelled less than seven (7) days before the scheduled start date Liquidated Damages equivalent to one hundred percent (100%) of the Fees for the Services to be provided at that time will be payable,

as a result of such rescheduling or cancellation, the Supplier may extend any performance timelines specified under a Specification.

3.2 If the Supplier considers that the Client is not, or may not, be complying with any of the Client's obligations, it shall be entitled to rely on this as relieving the Supplier's performance under this Agreement if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details of it to the Client in writing.

3.3 The Client agrees and acknowledges the terms of the applicable Licence Agreements (which shall be set out in the applicable Specification or as notified by the Supplier to the Client from time to time) and the terms of the CSP Agreement shall form part of this Agreement. For the avoidance of doubt, you shall give express authority to the Supplier to agree and accept any Licence Agreements which need to be accepted in order that the Supplier may fulfil the Services and to provide such Third Party Services and you shall not hold the Supplier liable for any loss or damage caused by accepting such Licence Agreements on behalf of the Client. In the event the applicable Licence Agreements and/or the CSP Agreement is not applicable to the Services being received or delivered by the Supplier to the Client under this Agreement, such agreements shall not apply.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier warrants that the Services will be performed with reasonable skill and care and that it will be provided in accordance with the Specification and this Agreement. For the avoidance of any doubt, where the Services include the provision of Goods, Schedule 3 shall apply.

4.2 The warranty in Clause 4.1 shall not apply to the extent of any non-conformance that is caused by use of the Services contrary to the Supplier's instructions.

4.3 If the Services do not conform with the warranty in Clause 4.1, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.

4.4 This Agreement shall not prevent either party from entering into similar Agreements with third parties, or from commissioning, engaging, independently developing, using, selling or licensing materials, products or Services that are similar to those provided under this Agreement.

- 4.5 The Supplier shall:
- (a) staff the Supplier support desk with a team of skilled individuals (whether subcontracted or not);
 - (b) maintain a team skilled in the platform and with knowledge of the code developed to deliver the solution;
 - (c) undertake regular communication with the Client regarding its service needs;
 - (d) be a bona fide licensed user of all third party software and of the Supplier's software;
 - (e) notify the Client promptly if the Supplier is unable to comply with any of the terms of this Agreement, any Licence Agreement or the CSP Agreement;
 - (f) use commercially reasonable endeavours to follow the instructions of the Client;
 - (g) provide the Client with all necessary co-operation in relation to this Agreement;
 - (h) comply with all applicable laws and regulations with respect to its activities under this Agreement; and
 - (i) carry out all other Supplier responsibilities set out in this Agreement or in any of the schedules in a timely and efficient manner.
- 4.6 The Supplier shall be under no obligation to provide the Services to the Client in the following circumstances;
- (a) providing the Services outside "Normal Business Hours" (being 9.00am to 5.00pm local UK time on "Business Days" (a day other than Saturday, Sunday or public holiday in England when banks are open for business) unless otherwise agreed between the Parties in writing;
 - (b) by providing any other Services not covered herein;
 - (c) training in use of any upgrades unless otherwise agreed by the Supplier; and
 - (d) providing the Services to the Client where such support would have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client pursuant to the call for technical support.
5. SERVICE LEVELS
- 5.1 The Supplier shall use such commercially reasonable endeavours to provide the Services in accordance with the "Services Levels" (the standards of performance which the Supplier shall reach or provide in performing the Services, as set out in the Specification, as may be amended from time to time by the parties) and the Specification.
- 5.2 Where the Supplier fails to meet a Service Level, the Supplier shall use such commercially reasonable endeavours to:
- (a) establish the cause or reason for the failure to meet the Service Level;
 - (b) report the cause or reason for the failure to the Client;
 - (c) discuss the cause or reason for the failure with the Client;
 - (d) undertake such remedial actions that are reasonably necessary for the Supplier to meet the Service Level;
 - (e) inform the Client of the steps it has taken to overcome the cause or reason for the failure to meet the Service Level; and
 - (f) notify the Client when the Supplier has achieved the Service Level.
- 5.3 The Supplier shall not fail to meet any Service Level where failure is as a result of or caused or contributed to by:
- (a) a breach by the Client of any of its obligations contained in the Agreement; or

(b) a Force Majeure Event as set out in Clause 24.

6. FEES

6.1 It is agreed that:

- (a) the Client shall pay to the Supplier the fees, costs, or other costs in accordance with any agreed Specification (the "Fees"). Unless otherwise agreed, the Fees are exclusive of any value added tax and travel related expenses and the costs of packaging, insurance and transport of the Goods;
- (b) invoices will be raised weekly, monthly or as set out in the Specification;
- (c) all invoices related to Services shall be payable in full and cleared funds within thirty (30) days from date of the invoice unless otherwise set out in the Specification, without deduction or set-off, and time for payment shall be of the essence under this Agreement. When making a payment the client shall quote the relevant reference numbers and the invoice number.
- (d) in the event the Client is in breach of its payment obligations, the Supplier shall provide written notice of such breach, specifying in detail the nature of the breach and providing fourteen (14) days' notice to remedy such breach if capable of remedy. If the Client fails to remedy such breach the Supplier shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either party.; and
- (e) the Supplier shall obtain the Client's approval before incurring any other costs in relation to the Services, other than costs that are stated in the applicable Specification which are deemed to have been approved by the Client in advance and any expenses not exceeding £500 (excluding VAT) per day. The Supplier shall provide the Client, at the Client's request, with receipts for all expenses submitted for reimbursement.

6.2 Clause 6.3 shall apply if the Services are to be provided on a time-and-materials basis. The remainder of this Clause 6 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.

6.3 Where the Services are provided on a time-and-materials basis, the Supplier's rates will be calculated as follows:

- (a) a 'day' will mean a period of seven (7) hours, which shall include time spent travelling to and from any Client premises or any other location where the Services are performed as well as any lunch and other breaks. The Supplier shall be entitled to charge an overtime rate as specified in the Specification for time worked outside this seven (7) hour period and/or outside of any Business Days, unless otherwise agreed and set out in the Specification;
- (b) where the Supplier charges are based on an hourly rate, any time spent which is less than one (1) hour shall be charged on a pro-rata basis per thirty (30) minutes; and
- (c) the Supplier shall be entitled to vary the hourly (or) day rates during the existence of these Term without the consent of the Client. Before implementing new hourly (or) day rates the Supplier shall provide them in writing to the Client.

6.4 The Supplier shall not be obliged to provide any of the Services and/or deliver any Goods while any duly issued invoice(s) remain unpaid under any Specification, but should the Supplier choose to continue to do so, this shall not in any way be construed as a waiver of the Supplier's rights or remedies.

6.5 For the avoidance of doubt, the Supplier may increase any fees related to any Third Party Services (as defined in Clause 16) in line with any increases imposed upon the Supplier by such third parties upon 30 days' notice.

6.6 Subject to Clause 6.5, the Supplier reserves the right, on giving the Client 30 days' notice, to increase the Fees once in any twelve (12) month period. If the Client does not agree with this increase, then they may

terminate this Agreement upon 30 days written notice and before such price increase takes effect. If the Supplier does not receive written notice within thirty (30) days, the Client is deemed to have agreed to the amendment to the Fees.

- 6.7 Subject to Clause 6.5, the Fees may increase on an annual basis with effect from each anniversary of the date of the Specification in line with the percentage increase in the Retail Prices Index in the preceding 12-month period.
- 6.8 Without prejudice to any other remedy that the Supplier may have, if the Client fails to pay any amount properly due and payable, then unless the Client has notified the Supplier in writing that such payment is in dispute within ten (10) days of receipt of the corresponding invoice, the Supplier shall have the right to:
- (a) charge interest on the overdue amount at a rate of 4 per cent (4%) per annum above Barclays Bank plc base rate, accruing on a daily basis from the due date up to the date of actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
 - (b) require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
 - (c) not perform any further Services (in whole or in part) even when the Client has informed the Supplier, or the Supplier is aware that not to perform any further Services (in whole or in part) will cause the Client inconvenience, loss (financial or otherwise) or other damage.
- 6.9 The Client shall not be able to dispute any amounts which have been paid by the Client after a period of three (3) months has elapsed from the date of invoice.

7. SECURITY

- 7.1 The Supplier shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to any and all Services, the Supplier's system and related networks or resources and any Client data, in accordance with "Good Industry Practice" (meaning the standards that fall within the upper quartile of a skilled and experienced provider of business-critical managed Services similar or identical to the Services, having regard to factors such as the nature and size of the parties, the term, the pricing structure and any other relevant factors). For the avoidance of any doubt, the obligations under this Clause shall not apply to any of the Client's networks which have not been maintained with the latest software or systems.
- 7.2 Each Party shall promptly inform the other if it suspects or uncovers any breach of security, and shall use all commercially reasonable endeavours to promptly remedy such breach.

8. WARRANTIES

- 8.1 Except for any warranties expressly set forth in this Agreement, in Schedule 3 and/or in the Specification, the Services are provided on an "as is" basis, and the Client's use of the Services is at its own risk. The Supplier does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.
- 8.2 In the event that a defect, fault or impairment in the provision of the service(s) causes a service interruption and the Supplier becomes aware of this either through the Client giving notification to the Supplier of such default, fault or impairment, or as a result of the Supplier's monitoring, then the Supplier shall use its commercially reasonable endeavours to resolve that defect, fault or impairment to the extent it reasonably can.

- 8.3 If the Supplier determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from: (i) the negligence, act, omission, or default of the Client, (ii) the Client's breach of this Agreement, or (iii) the operation, failure or malfunction of any network, equipment, hardware or software owned or controlled by the Client or (iv) any third party action in response to an act or omission of the Client or any person given access to the service by the Client (including third party hosted software vendors) then the Supplier may recover from the Client all reasonable costs to be incurred by it or on its behalf in connection with the remedy of such defect, fault or impairment. Therefore, for the avoidance of doubt, the Supplier can make no commitment to fix any fault and time is not of the essence.
- 8.4 Unless otherwise agreed, if the Client accesses the Services through the public Internet or through a private circuit provisioned by a bandwidth provider of the Client's choice, the Client assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to be in the chosen provider's network.
- 8.5 If the Client moves from one Client site to another site or makes changes to any Client site or opens a new location to be added to the Client sites, the Client must notify the Supplier in advance. The Supplier may need to carry out an inspection of any cabling and advise the Client of any work to bring the IT infrastructure up to standard operating conditions at the new location in order to remain eligible for coverage. The Supplier will provide a quotation if it is to provide additional resources or Services in the case of any change at the Client sites or new Client sites for including as part of the Fees.
- 8.6 The Supplier will request approval from the Client before making any significant changes to the Services. The Supplier will arrange any scheduled downtime in advance with the Client. The Supplier is not responsible for unscheduled downtime that is due to anything outside the Supplier's control and the Supplier and its subcontractors may suspend some or all of the Services in order to carry out scheduled or emergency maintenance or repairs.
- 8.7 The Supplier will carry out network management routines to test the operations and functions of the relevant Services from time to time, notifying the Client in advance.
- 8.8 The Supplier reserves the right to take any action that it perceives necessary to protect the Client's systems even though this may impact on the Client's business activities. The Supplier will make reasonable endeavors to inform the Client by telephone or email in advance of such action, but such action will not be dependent on such notification having been given or acknowledged.
- 8.9 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Services as set out within the relevant Specification will be uninterrupted or error-free.
9. ACCEPTANCE
- 9.1 The relevant Specification shall specify which "Deliverables" (documents, products and materials developed by the Supplier in relation to the Services in any form, each a "Deliverable") that are to be subject to "Acceptance Testing" (as defined in the relevant Specification) and provide a framework for the nature of the testing that will be required.
- 9.2 In relation to any Acceptance Testing:
- (a) the Client shall have a reasonable period of time, up to five Business Days unless otherwise specified in the Specification, from the Supplier's delivery of each Deliverable under the relevant Specification ("Acceptance Periods") to confirm that such Deliverable conforms to the acceptance criteria as specified or referred to in a Specification or as otherwise agreed between the parties. If the Client determines that a Deliverable does not conform to the acceptance criteria, the Client shall by the last

day of the Acceptance Period provide to the Supplier a written list of the non-conformities to the acceptance criteria;

- (b) Client shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify the Supplier within the Acceptance Period if any of the Deliverables do not conform to the acceptance criteria. In the event that Client has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under this Agreement such Deliverable, shall be deemed accepted as if the Client had issued a written acceptance thereof. Once the Deliverable has been accepted by the Client and payment has been settled in accordance with Clause 6, the Deliverable shall become the property of the Client. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to the Supplier during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause 9.2(c) below.
- (c) If there are any non-conformities within any Deliverable, which have been highlighted by Client or the Supplier during the Acceptance Period and whereby the Deliverable has not been accepted by the Client for this reason and such non-conformity is a directly attributable act or omission on the part of the Supplier, the Supplier shall (without prejudice to the Client's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- (d) If any non-conformity cannot be remedied by the Supplier due to an error, defect or fault which the Supplier is able to demonstrate to the reasonable satisfaction of the Client to be outside the Supplier's control and which has disabled the Supplier's ability to remedy such non-conformity, then the Supplier reserves the right to terminate work on that specific Deliverable. The Supplier agrees not to charge Client, any amounts paid or payable by the Client to the Supplier which specifically relate to the non-conforming Deliverable which cannot be remedied.

10. TERM AND TERMINATION

10.1 This Agreement shall commence on the Commencement Date and each Specification shall commence on the Services Commencement Date and shall remain in full force for the term specified in the Specification (the "Initial Term") or earlier terminated in accordance with the term of this Agreement. Thereafter, this Agreement and each Specification shall continue to automatically renew for additional successive twelve (12) terms (each renewal a "Renewal Term", and together with the Initial Term, the "Term") unless a Party gives written notice to the other Party, not later than ninety (90) days before the end of the Initial Term or the relevant Renewal Term, to terminate this Agreement.

10.2 Without prejudice to any rights that the parties have accrued under this Agreement, or any of their respective remedies, obligations or liabilities, either party may terminate this Agreement and applicable Specification (which is subject to the event listed below) with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so. For the avoidance of doubt, non-payment or late payment of an invoice shall be deemed a material breach of this Agreement;
- (b) 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; or
- (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11. CONSEQUENCES OF TERMINATION

- 11.1 If this Agreement terminates in accordance with Clause 10 (and only in such circumstances), then subject to the total Fees incurred, the Client will pay the Supplier, any costs that have been actually and properly incurred by the Supplier including any and all outstanding fees and any termination fees from any Third Party Services (as defined in Clause 16) prior to the date of termination and/or as otherwise specified by the Supplier to the Client as being payable, unless otherwise agreed.
12. LIMITATION OF LIABILITY
- 12.1 Nothing in this Agreement shall limit or exclude either party's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation made by that party on which the other party can be shown to have relied.
- 12.2 The Supplier's liability for breach of its obligations under Clause 15 (Intellectual Property Rights) and Clause 17 (Client Personal Data) shall be limited to £250,000 in the aggregate.
- 12.3 Subject to Clause 12.1, neither party shall be liable to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:
- (a) loss of profits;
 - (b) loss of sales or business or business opportunity;
 - (c) loss of agreements or contracts;
 - (d) loss of actual or anticipated savings;
 - (e) loss of reputation;
 - (f) loss of, damage to or corruption of data;
 - (g) loss of or damage to goodwill; and
 - (h) any indirect or consequential loss.
- 12.4 Subject to Clauses 12.1, 12.2 and Error! Reference source not found., the parties' total liability to the other, whether in contract, tort (including negligence), breach of its statutory duty, or otherwise, arising under or in connection with:
- (a) the Goods, shall be limited to the replacement value of the Goods and strictly in line with the warranties and refund policies of the manufacturer as more fully set out in Schedule 3; and
 - (b) the performance or contemplated performance of the specific Service, shall be limited to one hundred and twenty-five per cent (125%) of the total Fees paid for the related Service under this Agreement during the twelve (12) months preceding the date on which the claim arose.
13. SERVICE REVIEW AND GOVERNANCE
- 13.1 The Client and the Supplier shall have regular meetings to monitor and review the performance of this Agreement.
14. CONFIDENTIALITY
- 14.1 Each party agrees and undertakes that it will treat all confidential information disclosed to it by the other party in connection with the Services as strictly confidential at all times during the Term of this Agreement and for 2 years thereafter and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other party, publish or otherwise disclose to any third party any such confidential information except for the purposes intended by the relevant Specification.
- 14.2 To the extent necessary to implement the provisions of any Services, each party may disclose confidential information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 14.1.

- 14.3 The obligations of confidentiality set out in this Clause 14 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the possession of the receiving party prior to the date of receipt from the disclosing party or was rightfully acquired by the receiving party from sources other than the disclosing party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving party without use of or reference to the confidential information.
- 14.4 For purposes of this Agreement confidential information shall mean all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its "Representatives") to the other party and that party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.
15. INTELLECTUAL PROPERTY AND SUPPLIER SOFTWARE
- 15.1 Subject to Clause 15.2, by the Supplier and upon the Supplier receiving payment in full, all Intellectual Property Rights in bespoke materials or code created exclusively under the Services ("Bespoke IPR") for the Client shall vest automatically in the Client. The Supplier hereby assigns to the Client its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Client hereby provides an irrevocable, worldwide, royalty-free licence to the Supplier for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.
- 15.2 Notwithstanding Clause 15.1, The Supplier and/or its licensors shall retain exclusive ownership of (i) all of its pre-existing intellectual property ("Background Materials"); and (ii) any and all ideas, concepts, techniques and know-how discovered, created or developed by the Supplier during the performance of the Services that are not based on or derived from the Client's confidential information ("General IP") together with the Background Materials, (the "Supplier's Intellectual Property"). The Supplier grants to the Client a non-exclusive, revocable, worldwide, royalty free and non-transferable license to use the Supplier's Intellectual Property.
- 15.3 For the purposes of this Agreement, "Intellectual Property Rights" shall mean, all patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 15.4 Where software has been written or developed by the Supplier for the Client, the Client acknowledges that such software may only be compatible with the current versions of other software and/or hardware and the Supplier provides no guarantee that it will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, the Supplier is under no obligation to supply the Client with any updates or add-ons to the software.
16. THIRD PARTY SERVICES.
- 16.1 The Supplier shall (if requested by the Client) procure the third-party licences and or services (together, "Third Party Services") as set out in the applicable Specification. The Supplier expressly excludes any

warranty to the Client that the Third Party Services supplied or licensed by it under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in its marketing, sales or other associated documentations. The Client shall remain liable for any and all payments owed to the Supplier throughout this Agreement from the point of acquisition of the licence and until the end of the respective licence terms and shall adhere to any End User Licence Agreements and any other agreements sent by such third party in relation to the Third Party Services.

- 16.2 For the avoidance of doubt, the Supplier shall only be held liable to the extent permitted under the respective Licence Agreements for the actions or omissions of any third parties and shall not be held liable for the actions and or omissions of any other third party including but not limited to Microsoft (whereby the Client will have a direct contract in place with Microsoft through the CSP Agreement).
17. CLIENT PERSONAL DATA
- 17.1 For the purposes of Clauses 17.1 to 17.8, the following definitions shall apply:
"Applicable Data Protection Legislation" means:
- a) To the extent the UK data protection law applies: 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) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
 - b) To the extent the EU GDPR applies: the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data;
- "Client Personal Data" means any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Client;
- "Applicable Laws" means all applicable laws, statutes, regulations from time to time in force which relate to the business of the applicable party;
- "EU GDPR" means the General Data Protection Regulation ((EU) 2016/679) as it has effect in EU law; and
"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 17.2 The terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Applicable Data Protection Legislation;
- 17.3 Both parties will comply with all applicable requirements of Applicable Data Protection Legislation. Clause 17.1 to 17.8 are in addition to, and do not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Legislation.
- 17.4 The parties have determined that, for the purposes of Applicable Data Protection Legislation, the Supplier shall process the personal data set out in Schedule 1, as a processor on behalf of the Client.
- 17.5 Without prejudice to the generality of Clause 17.3, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to the Supplier for the duration and purposes of this agreement.
- 17.6 In relation to the Client Personal Data, Schedule 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 17.7 Without prejudice to the generality of Clause 17.3 the Supplier shall, in relation to Client Personal Data:
- (a) process that Client Personal Data only on the documented instructions of the Client, which shall be to process that Personal Data for the purpose as set out in Schedule 1;
 - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, which the Client has reviewed and confirms are appropriate to the harm

that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

- (c) ensure that any personnel engaged and authorised by the Supplier to process Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Client insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Client's cost and written request, in responding to any request from a data subject and in ensuring the Client's compliance with its obligations under Applicable Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Client without undue delay on becoming aware of a personal data breach involving the Client Personal Data;
- (f) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of this Agreement unless the Supplier is required by Applicable Laws to continue to process that Client Personal Data. For the purposes of this Clause 17.7(f) Client Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with Clauses 17.1 to 17.8 and allow for reasonable audits by the Client or the Client's designated auditor, for this purpose, on reasonable written notice.

17.8 The Client hereby provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Client Personal Data, provided that the Supplier:
 - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Legislation, and are consistent with the obligations imposed on the Supplier in Clauses 17.1 to 17.8;
 - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - (iii) shall inform the Client of any intended changes concerning the addition or replacement of the processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Legislation, the Client shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Client Personal Data outside of the UK as required to deliver the Services, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Legislation. For these purposes, the Client shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

18. NO PARTNERSHIP OR AGENCY

18.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any part of the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

19. ASSIGNMENT

19.1 The Supplier may assign or otherwise transfer the whole or any part of this Agreement, including any of its rights and obligations under this Agreement, without the prior written consent of the Client.

20. ENTIRE AGREEMENT AND COUNTERPARTS

20.1 This Agreement, each Specification (together with any documents referred to therein) and any Variation 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.

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

20.3 No alteration to or variation of this Agreement shall take effect unless and until a Variation Agreement is signed on behalf of each of the parties by a duly authorised representative.

21. SEVERANCE

21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Agreement.

22. THIRD PARTY RIGHTS

22.1 No one other than a party to this Agreement and Microsoft (in respect of enforcing the terms of the CSP Agreement) shall have any right to enforce any of its terms.

23. NOTICES

23.1 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business; or shall be sent by electronic mail to the email address set out on the Specification or otherwise notified to either party by the other party in writing,

23.2 Any notice or communication shall be deemed to have been received, if: (a) delivered by hand, on signature of a delivery receipt, (b) sent by post, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or (c) sent by electronic mail, on the next Business Day to when it was sent.

23.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall include e-mail.

24. FORCE MAJEURE

24.1 Neither party to this Agreement shall be deemed to be in breach of this Agreement or any Specification, or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Agreement or any Specification due to a force majeure event. For the purposes of this Agreement, force majeure means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, future pandemics and epidemics, riot, civil commotion, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lockout of the party's own staff shall not entitle them to claim that to be a force majeure event ("Force Majeure").

24.2 A party shall only be entitled to claim relief under this Clause if it:

- (a) informs the other party as soon as reasonably possible that an event of Force Majeure has occurred and its expected duration; and
- (b) uses all reasonable endeavours to mitigate, overcome or minimise the effects of the event of Force Majeure concerned,

and that if the period of delay or non-performance continues for six months or more, either party may terminate the Agreement by giving fourteen (14) days' written notice to the other party.

25. NON-SOLICITATION

25.1 The Client shall not solicit the Supplier's staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of nine (9) months thereafter. For the purposes of this Clause 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, subcontractor or independent contractor.

25.2 In the event that the Client is in breach of Clause 25.1 above then the Client shall pay to the Supplier by way of liquidated damages an amount equal to thirty percent (30%) of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to the Supplier's ability to seek injunctive relief.

25.3 The parties hereby acknowledge and agree that the formula specified in Clause 25.2 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

26. ANTI BRIBERY

26.1 The parties agree to abide by all applicable laws, regulations and sanctions in respect of anti-bribery and anti-corruption, including the Bribery Act 2010.

27. GOVERNING LAW AND JURISDICTION

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

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

SCHEDULE 1 - PARTICULARS OF THE DATA PROCESSING

Nature of processing	As set out in the Specification and the Agreement.
Purpose of processing	<p>In the case of data subjects other than staff of the Client: for the purpose of providing IT services and support to Client's business as set out in this Specification.</p> <p>In the case of staff: for the purpose of providing IT services and support for Client's employment and HR matters.</p>
Duration of the processing	For the term of this Specification
Types of Personal Data	<ul style="list-style-type: none"> • Name • Job title • Email address • Phone number • Business/home address • Any other personal data provided by Client to the Supplier
Categories of Data Subject	<ul style="list-style-type: none"> • Customers of the Client • Employees and/or contractors of the Client • Client third parties • Business contacts in general
Additional Instructions	<ul style="list-style-type: none"> • None



SCHEDULE 2 MICROSOFT (CSP) AGREEMENT ADDITIONAL TERMS

1. CSP MANAGED SERVICES

The Supplier is a reseller of Microsoft Cloud Solution Provider ("CSP") products ("CSP Managed Services"). Where the Services referred to in the Specification include the provision of CSP Managed Services, the CSP Managed Services shall be provided in accordance with and governed by the Specification and this Schedule (which is hereinafter referred to as the "CSP Managed Services Terms"). Except as defined in these CSP Managed Services Terms, capitalised terms shall have the meanings given to them in the Specification and/or the Agreement (as the case may be).

For the avoidance of any doubt, in the event of a conflict in respect of the CSP Managed Services referred to in the Specification only, between these CSP Managed Services Terms and the Agreement, the CSP Managed Services Terms shall prevail. For all other Services, the Agreement shall apply.

2. INTERPRETATION

The following definitions in this paragraph 2 apply in these CSP Managed Services Terms.

Cap: is the total monthly volume of Microsoft services which the Client is permitted to use.

Consumption Subscriptions: refers to the licences that are billed based on actual usage in the preceding month.

Minimum Users: the minimum users as provisioned from time to time.

Online Service: means any of the Microsoft-hosted online services subscribed to by Client under the Agreement, including (but not limited to) Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

Subscription: the purchase of a Subscription Service.

Subscription Service: means a right to use the Product(s) for a defined term.

Products: means the products as they relate to Microsoft products.

Third Party Distributor: the third party who sells the Product(s) to the Supplier.

3. SERVICE PROVISION

3.1 By submitting an order through the Specification, the Client:

- (a) represents that any subscription commitments and requirements disclosed are complete and accurate in all respects;
- (b) agrees to pay the Supplier for all orders it submits for Products and the CSP Managed Services; and
- (c) agrees to the terms of the Agreement and the Specification.

3.2 By placing an order with the Supplier, the Client represents and warrants that the Client has accepted the CSP Agreement.

3.3 Once an order for a Subscription has been accepted by the Supplier:

- (a) Subscriptions shall continue for the duration of the Initial Term and any Renewal Term unless terminated in compliance with Clause 10.1 of the Agreement; and/or
 - (b) adjustments may only be made to increase the Minimum Users and not decrease below any current Minimum User provisioned.
- as more fully set out in the Agreement, these CSP Managed Services Terms and the Specification.

4. CLIENT'S OBLIGATIONS

4.1 The Client agrees and acknowledges to adhere to the terms of the CSP Agreement which govern the use of the Subscription Services and the Online Services.

5. FEES

5.1 Fixed Term Subscriptions:

- (a) Products sold under fixed term Subscriptions are sold for a term as specified in the Specification. The Specification shall specify if such Subscriptions are to be billed on a monthly or annual basis.
- (b) Any subsequent adjustments to annual Subscriptions (e.g. adding users) made mid-billing cycle will be invoiced and paid at the time of placing the order.
- (c) Any subsequent adjustments to monthly Subscriptions (e.g. adding users) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.

5.2 For all Consumption Subscriptions, the Client agrees and acknowledges that:

- (a) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Specification and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
- (b) Consumption Subscriptions will be billed at the next billing cycle and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for an Online Service sold on a consumption basis may change during the subscription period;
- (c) it shall pay all such usage and is responsible for monitoring its consumption needs;
- (d) the Client further acknowledges and accepts that the Supplier may establish or install a technical lock or barrier (the "Barrier"), which prevents the Client from utilization of a Product in excess of the Cap;
- (e) for the avoidance of doubt, if, in spite of paragraph 5.2(d), the Client utilises a Product in excess of the Cap, the Client shall pay to the Supplier fees and other expenses in accordance with its actual use. Any dysfunction or non-use of the Barrier shall not release the Client from paying fees and costs in accordance with its actual utilisation of a Product. The Supplier has no responsibilities with regards to preventing the Client from utilisation in excess of the Cap.

5.3 Subject to paragraph 5.4 below, the Fees may increase on an annual basis with effect from each anniversary of the date of the Specification in line with the percentage increase in the Retail Prices Index in the preceding 12-month period.

5.4 For the avoidance of doubt, the Supplier may increase any fees related to the Subscription Services in line with any increases imposed upon the Supplier by Microsoft and in line with the terms of the CSP Agreement.

5.5 The Supplier may change credit or payment terms for unfilled orders if, in the Supplier's reasonable opinion, the Client's financial condition, previous payment record, or relationship with the Supplier merits such change.

6. INTELLECTUAL PROPERTY

6.1 The Client acquires only such limited rights to use the Products as is explicitly described in the CSP Agreement. Any use by the Client of these rights beyond the scope permitted by the CSP Agreement shall constitute a material breach hereof.

6.2 The Supplier is not liable for defects in, or delays related to the Products.

6.3 For the avoidance of doubt, if a claim for infringement concerns the Product, the separate terms and conditions of the CSP Agreement shall apply and is a separate action between the Client and Microsoft.

7. LIMITATION OF LIABILITY

7.1 For the avoidance of doubt, the terms set out in the CSP Agreement govern the rights and responsibilities of the Client and Microsoft in relation to the use of the Subscription Services and Online Services and the Supplier excludes any and all liability in relation to the use of the Products.

- 7.2 Notwithstanding anything to the contrary in the Agreement, the Client shall indemnify the Supplier from and against any claims, including but not limited to claim for licence fees that directly or indirectly arises from the Client's use of the Subscription Services or reporting under the Agreement.
8. TERM & TERMINATION
- 8.1 The Client's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s), as more fully set out in paragraph 3.3 of this CSP Managed Service Terms. Unless otherwise specified in the applicable Specification, the Client shall remain liable for any and all payments due in respect of the licences until the end of the respective subscription period.
- 8.2 Termination of the licences will not affect any other Services provided under these CSP Managed Services Terms or the Agreement.
- 8.3 The Supplier shall not be liable whatsoever to the Client following any termination or suspension of the Subscription for legal, regulatory or any other reasons by Microsoft or the Third Party Distributor.
- 8.4 The Supplier may terminate the CSP Managed Services immediately on giving written notice to the Client if:
- (a) payment of any amount due from the Client under these CSP Managed Services Terms is overdue by ten (10) Business Days or more, provided that the Supplier has given the Client ten (10) days' written notice of such failure to pay; and/or
 - (b) upon termination by Microsoft of the licence(s); and/or
 - (c) in accordance with the CSP Agreement.
- 8.5 On termination of the Agreement for any reason:
- (a) the Client shall pay all outstanding sums owing to the Supplier up to and including the date of termination;
 - (b) all licences granted under the Agreement will terminate immediately except for fully-paid, perpetual licences;
 - (c) for metered Products billed periodically based on usage, the Client must immediately pay for unpaid usage as of the termination date; and
 - (d) if Microsoft is in breach and the Client is entitled, the Client will receive a credit for any Subscription Services fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

SCHEDULE 3 - SUPPLY OF GOODS

DEFINITIONS:

Goods: the goods to be provided as part of the Services (or any part of them), as set out in the Specification in the relevant section or as otherwise agreed in writing between the Parties.

1. THE GOODS

- 1.1 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement or have any contractual force.
- 1.2 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Goods which are required to conform with any applicable legislation or, where the Goods are to be supplied to the Client's specification, which do not materially affect their quality or performance.
- 1.3 If the Supplier cannot supply the Goods ordered by the Client, the Supplier reserves the right to offer Goods of equal quality at no extra cost. In such a case, if the Client does not wish to accept the alternative Goods offered, it may cancel the order and require the refund of any money paid to the Supplier in respect of that order, including carriage charges. This shall be the sole remedy of the Client in these circumstances.
- 1.4 Where the Goods are being supplied by a third party supplier, they will be supplied subject to any terms and conditions of sale and returns policy relating thereto by the relevant manufacturer and/or third party supplier.

2. PRICES

- 2.1 Prices for Goods shall be quoted to the Client upon receipt of an order for Goods. Notwithstanding the Supplier's provision of a quote, prices for Goods shall not be confirmed until such time as the manufacturer has confirmed acceptance of the order at which point the price for the Goods shall be established and the order shall be irrevocable. For the avoidance of doubt, the Supplier's provision of a quote shall not be deemed acceptance of an order by the Supplier.
- 2.2 Notwithstanding the foregoing, the Supplier reserves the right to increase its prices after providing the Client with a quote for the prices for Goods due to an increase in its third party supplier's price to the Supplier or an increase in direct costs to which the Supplier becomes subject (including without limit costs resulting from currency fluctuation) but the Supplier shall only increase its price by such level as is necessary to reflect such increases.
- 2.3 Unless otherwise stated, prices exclude any copyright levies, waste and environmental fees, and similar charges that by law or statute may or shall charge or collect upon resale.

3. DELIVERY

- 3.1 The Supplier shall endeavour to deliver Goods to the agreed delivery location on the agreed delivery date. Time for delivery shall not be of the essence of the contract.
- 3.2 If the Supplier fails to deliver Goods by the relevant delivery date after being given a reasonable opportunity to remedy such delay, except to the extent that such delay is due by a third party for which the Supplier shall have no liability, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by:
 - (a) a delay from the manufacturer, third party supplier or other third party;
 - (b) a Force Majeure event; or

- (c) the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.3 If ten (10) Business Days after the day on which the Supplier attempted to make delivery of Goods the Client has not taken delivery of those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Goods, or charge the Client for any shortfall below the price of the Goods.

3.4 The Supplier may deliver Goods by instalments, which shall be invoiced and paid for separately. The Client may not cancel an instalment because of any delay in delivery or defect in another instalment.

4. WARRANTIES

4.1 For Goods supplied to the Client, the Supplier shall pass onto the Client to the extent that it is able to do so, the benefit of any standard warranty or guarantee that is provided to the end user of the Products by the manufacturer/third party supplier(s) ("OEM Warranty"). The Supplier's only liability will be limited by the terms set out in such OEM Warranty.

5. TITLE AND RISK

5.1 Risk in Goods shall pass to the Client on delivery.

5.2 Title to Goods shall only pass to the Client once the Supplier receives payment in full (in cleared funds) for them.

5.3 Until title to the Goods has passed to the Client, the Client shall:

- (a) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (b) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (c) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 10.2(b); and
- (d) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

5.4 The Supplier may recover Goods in which title has not passed to the Client. The Client irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Client (including with vehicles), in order to satisfy itself that the Client is complying with the obligations in paragraph 5.3, and to recover any Goods in which property has not passed to the Client.

6. CANCELLATION

6.1 Notwithstanding paragraph 1.4, once an order for Goods has been accepted by the Supplier, no order may be cancelled by the Client except with the agreement in writing of the Supplier and on terms that the Client shall indemnify the Supplier in full against all reasonable losses, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

7. RETURN OF GOODS

7.1 All returns of Goods can only be made, and will only be accepted by the Supplier if they comply with this paragraph 7.

7.2 Subject to the provisions of this Schedule 3, Goods may only be returned in accordance with the Supplier or third party supplier's terms and conditions or returns policy.

7.3 Prior authorisation for the return of any Goods must be obtained from the Supplier or third party supplier via such method as the Supplier may advise. Such returns authorisation shall be given at the Supplier's or third party supplier's sole discretion.

7.4 Goods that are authorised for return must be returned by the Client in accordance with the applicable return instructions provided by the Supplier or third party supplier.

7.5 The Supplier or the third party supplier reserves the right to levy a reasonable administration charge in respect of returns.