
Solutions for Accounting Limited - Client Agreement

Amended 23/09/2024 (Schedule 4, Clause 3.3 added)

Further amended 29/08/2025 (Clause 7.6.1 updated)

Schedule Navigation:

- Subscription to re-sold software – Schedule 1;
- Hosting services – Schedule 2;
- Subscription to Supplier's own-brand software – Schedule 3;
- Supply of technical services such as implementation, installation and training (but excluding support services) – Schedule 4; and
- Supply of support services – Schedule 5

BACKGROUND

- (A) The Supplier is in the business of providing the Available Services.
- (B) The Customer wishes to obtain and the Supplier wishes to provide the Services on the terms set out in this Agreement and the applicable Order.

TERMS & CONDITIONS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Agreement:

"Applicable Data Protection Laws" means:

- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- (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.

"Applicable Laws" means all applicable laws, statutes and regulations from time to time in force.

"Available Services" means the services (including the Subscriptions) as set out in Schedules 1 to 5.

"Business Day" means a day, other than a Saturday, Sunday or public holiday in England or a day during the period between 24 December and 1 January (inclusive).

"Business Hours" means the period from 8.30 am to 5.30 pm on any Business Day.

"Charges" means the sums payable for the Services as set out in an Order and the applicable Schedule(s).

"Customer" means the person or entity identified as such in the Order.

"Customer's Equipment" means any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in an Order.

"Customer Materials" means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 5.1.4.

"Customer 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 Customer.

"Deliverables" means any output of the Services to be provided by the Supplier to the Customer as specified in an Order.

"EU GDPR" means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, 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 (including know-how and trade secrets) 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.

"Order" means the Supplier's standard document titled "Sales Order Confirmation", completed with details of the Services to be carried out and the charges for those Services.

"Services" means those of the Available Services which the Supplier agrees to provide under an Order.

"Subscription" means the subscription or licence granted or procured by the Supplier to or for the Customer under Schedule 1, 2 or 3 (as applicable) in respect of a particular piece of software or the hosting thereof.

"Supplier" means Solutions for Accounting Limited, company number 03501282.

"Supplier's Equipment" means any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services, including any such items specified in an Order but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

"Supplier Personal Data" means any personal data that the Supplier processes in connection with this Agreement, in the capacity of a controller.

"UK GDPR" has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

"VAT" means value added tax chargeable in the UK.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.8 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10 A reference to **writing** or **written** includes email.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the date when the Customer returns the executed Order in accordance with clause 3, and shall continue unless terminated earlier in accordance with clause 12 (or, where applicable, the provisions of a Schedule):

- 2.1.1 in respect of a Subscription under any of Schedules 1, 2 or 3, until such Subscription ends under the applicable Schedule; and
 - 2.1.2 in respect of Services provided under Schedules 4 or 5, until the provision of all such Services have been completed.
- 2.2 The Supplier shall provide the Services from the date specified in the relevant Order and/or Schedule. In some cases, Services under one Schedule may not commence until Services under another Schedule have been completed in whole or in part, and in those circumstances the Agreement shall continue until the latter of the final Subscription ending and the final Services under Schedule 4 or 5 being completed.

3. ORDER PROCESS

- 3.1 All quotations issued by the Supplier are invitations to treat, and are not open to acceptance.
- 3.2 If the Customer wishes to acquire some or all of the Available Services, whether described in a quotation or otherwise, then it must discuss the same with the Supplier. The Supplier will issue an Order to the Supplier in a format capable of electronic signature by the Customer.
- 3.3 The Agreement comes into effect when an authorised representative of the Customer applies his electronic signature to the Order and returns the executed Order to the Supplier.
- 3.4 Once an Order has become effective under clause 3.3, no amendment shall be made to it except by the written agreement of an authorised representative of both the Customer and the Supplier.

4. SUPPLIER'S RESPONSIBILITIES

- 4.1 The Supplier shall use reasonable endeavours to provide or perform the Services, and deliver the Deliverables to the Customer, in accordance with the Order in all material respects.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in an Order but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.
- 4.3 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer's premises (where applicable) and that have been communicated to it under clause 5.1.5, provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- 5.1.1 co-operate with the Supplier in all matters relating to the Services;
- 5.1.2 appoint a manager in respect of the Services to be performed under the Order. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Services;
- 5.1.3 provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities (including remote access to systems and IT networks) as required or otherwise requested by the Supplier including any such access as is specified in an Order;
- 5.1.4 provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under an Order or otherwise required by the Supplier in connection with the Services and ensure that they are accurate and complete in all material respects;
- 5.1.5 inform the Supplier of all health and safety and security requirements that apply at the Customer's premises (where applicable);
- 5.1.6 ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant United Kingdom standards or requirements as well as any system requirements recommended by the Supplier;
- 5.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment, in all cases before the date on which the Services are to start;
- 5.1.8 keep and maintain the Supplier's Equipment in good condition and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and
- 5.1.9 comply with any additional responsibilities of the Customer as set out in the relevant Order or Project Plan.

- 5.2 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed a reasonable extension of time to perform its obligations having regards to the delay caused by the Customer and its impact on the Supplier. By way of example only, where training was scheduled to be delivered on a particular day under Schedule 4, it may be that the Supplier personnel delivering the training are not available to re-schedule for a significant period after the proposed date. Such delay on the part of the Supplier would be permitted by this clause 5.2.

6. NON-SOLICITATION AND EMPLOYMENT

The Customer shall not, without the prior written consent of the Supplier, at any time from the date on which any Services commence to the expiry of twelve months after the completion of all such Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of such Services.

7. CHARGES AND PAYMENT

- 7.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges. The relevant Schedule to this Agreement will set out for each category of Available Services whether Charges will be on a subscription basis or on a time and materials basis (subject to any variation in the applicable Order).
- 7.2 Where the Charges are calculated on a time basis, then save as otherwise specified in the Order:
- 7.2.1 the Supplier's daily fee rates are calculated on the basis of its personnel working from 9.30AM to 4.30PM, with a one-hour lunch break;
 - 7.2.2 the Order may indicate either a specific period of time for the Services in question, or an estimate. Where an estimate is provided, the actual time will be clarified and stated by the Supplier during the project planning phase; and
 - 7.2.3 the Supplier will not be required to provide time sheets or similar to justify Charges in compliance with clause 7.2.2.
- 7.3 Where the Charges are calculated on a subscription basis, the amount and the recurrence of those Charges shall be as set out in the applicable Order and Schedule.

- 7.4 The Supplier shall invoice the Customer for the Charges in accordance with the applicable Schedule(s) to this Agreement, as varied by the Order (if applicable).
- 7.5 The Customer shall pay each invoice submitted to it by the Supplier within 14 days of receipt to a bank account nominated in writing by the Supplier from time to time. This is without prejudice to the Supplier's right to require any sums to be paid (in whole or in part) prior to the commencement of performance of some or all of the Services, where so specified in the Order.
- 7.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this Agreement on the due date:
- 7.6.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest shall accrue on a daily basis at the rate prescribed pursuant to the provisions of the Late Payment of Commercial Debts (Interest) Act 1998; and
- 7.6.2 the Supplier may suspend part or all of the Services until payment (including accrued interest) has been made in full.
- 7.7 All sums payable to the Supplier under this Agreement:
- 7.7.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- 7.7.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 In relation to the Deliverables:
- 8.1.1 the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- 8.1.2 the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Agreement to use the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- 8.1.3 the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 8.1.2.
- 8.2 In relation to the Customer Materials, the Customer:

- 8.2.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
 - 8.2.2 grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Customer Materials for the term of this Agreement for the purpose of providing the Services to the Customer.
- 8.3 The Supplier:
- 8.3.1 warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the Intellectual Property Rights of any third party; and
 - 8.3.2 shall not be in breach of the warranty at clause 8.3.1 to the extent the infringement arises from:
 - 8.3.2.1 the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Services or any Deliverable;
 - 8.3.2.2 any modification of the Services or any Deliverable, other than by or on behalf of the Supplier; or
 - 8.3.2.3 compliance with the Customer's specifications or instructions.
- 8.4 The Customer:
- 8.4.1 warrants that the receipt and use in the performance of this Agreement by the Supplier, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - 8.4.2 shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Customer Materials.

9. DATA PROTECTION

- 9.1 For the purposes of this clause 9, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.

- 9.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 9.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:
- 9.3.1 the Supplier shall process the Customer Personal Data as processor on behalf of the Customer; and
- 9.3.2 the Supplier shall act as controller of the Supplier Personal Data.
- 9.4 The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://solutionsforaccounting.co.uk/privacy-policy> (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.
- 9.5 Without prejudice to the generality of clause 9.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier or lawful collection of the same by the Supplier for the duration and purposes of this Agreement.
- 9.6 Without prejudice to the generality of clause 9.2, the Supplier shall, in relation to Customer Personal Data:
- 9.6.1 process that Customer Personal Data only on the documented instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
- 9.6.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer 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;

- 9.6.3 ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - 9.6.4 assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 9.6.5 notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
 - 9.6.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law or its internal archiving or retention policies or practices to continue to process that Customer Personal Data. For the purposes of this clause 9.6.6 Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
 - 9.6.7 maintain records to demonstrate its compliance with this clause 9.
- 9.7 The Customer provides its prior, general authorisation for the Supplier to:
- 9.7.1 appoint processors to process the Customer Personal Data, provided that the Supplier:
 - 9.7.1.1 shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 9;
 - 9.7.1.2 shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier.
 - 9.7.2 transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer

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).

10. CONFIDENTIALITY

10.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of two years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.

10.2 Each party may disclose the other party's confidential information:

10.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and

10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

11. LIMITATION OF LIABILITY

11.1 **Background to the limits and exclusions on the Supplier's liability.** The Supplier has obtained insurance cover in respect of its own legal liability for property damage not exceeding £5 million in the annual aggregate. The Supplier has been unable to obtain insurance in respect of certain types of loss at a commercially viable price. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

11.2 **Scope of this clause.** References to liability in this clause 11 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 11.3 **Liabilities which cannot legally be limited.** Nothing in this Agreement limits or excludes any liability to the extent that such liability cannot legally be limited or excluded.
- 11.4 **Cap on the Supplier's liability.** Subject to clause 11.3 the Supplier's total liability to the Customer:
- 11.4.1 for damage to property caused by the negligence of the Supplier's employees or agents in connection with this Agreement shall not exceed £2.5 million in the annual aggregate; and
 - 11.4.2 for all other loss or damage which does not fall within clause 11.4.1, shall not exceed 125% of the sum of the Charges payable under this Agreement during the calendar year in which the event or circumstances giving rise to such liability commenced.
- 11.5 **Specific heads of excluded loss.** Subject to clause 11.3, the Supplier shall have no liability whatsoever to the Customer for or in respect of any of the following, in each case whether direct or indirect save for 11.5.8:
- 11.5.1 loss of profits or revenue;
 - 11.5.2 loss of sales, business or opportunity;
 - 11.5.3 loss of agreements or contracts;
 - 11.5.4 loss of anticipated savings;
 - 11.5.5 loss of use or corruption of software, data or information;
 - 11.5.6 loss of or damage to goodwill or reputation;
 - 11.5.7 losses under the Customer's third-party contracts; and
 - 11.5.8 indirect or consequential loss.
- 11.6 **Exclusion of statutory implied terms.** The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 11.7 **No liability for claims not notified within 30 days.** Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having

occurred and shall expire 30 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

- 11.8 **No greater liability to end users.** If the Customer is not the ultimate end user, licensee or recipient of the Services (each subsequent end user, licensee or recipient being an “**End User**”), then without limiting any restrictions on the Customer elsewhere in this Agreement, the Customer shall indemnify and hold the Supplier harmless from and against:

11.8.1 liability to such End User which is in duplication of liability to the Customer, and

11.8.2 liability to such End User which is in excess of the liability that the Supplier would owe to the Customer in respect of the relevant act(s) or omission(s) under this Agreement if the Customer were in the place of the applicable End User.

12. TERMINATION

- 12.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:

12.1.1 the Customer commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

12.1.2 the Customer repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

12.1.3 the Customer 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 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

12.1.4 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;

12.1.5 the Customer applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;

12.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;

- 12.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer;
 - 12.1.8 the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
 - 12.1.9 a person becomes entitled to appoint a receiver over all or any of the assets of the Customer or a receiver is appointed over all or any of the assets of the Customer;
 - 12.1.10 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
 - 12.1.11 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1.3 to clause 12.1.10 (inclusive);
 - 12.1.12 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 12.1.13 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 12.2 Without affecting any other right or remedy available to it (including its right to terminate the Agreement), the Supplier may suspend this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment.

13. OBLIGATIONS ON TERMINATION AND SURVIVAL

13.1 Obligations on termination or expiry

On termination or expiry of this Agreement:

- 13.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied (in whole or in part) but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- 13.1.2 the Customer shall return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the

Supplier's Equipment. Until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping;

13.1.3 the Supplier shall on request return any of the Customer Materials not used up in the provision of the Services; and

13.1.4 any licences granted to the Supplier under any of the Schedules to this Agreement shall automatically cease.

13.2 Survival

13.2.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

13.2.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

14. FORCE MAJEURE

14.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

14.1.1 acts of God, flood, drought, earthquake or other natural disaster;

14.1.2 epidemic or pandemic;

14.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

14.1.4 nuclear, chemical or biological contamination or sonic boom;

14.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

14.1.6 collapse of buildings, fire, explosion or accident;

14.1.7 any labour or trade dispute, strikes, industrial action or lockouts;

14.1.8 non-performance by suppliers or subcontractors; and

- 14.1.9 interruption or failure of utility service.
- 14.2 Provided it has complied with clause 14.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 14.3 The Affected Party shall:
- 14.3.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 14.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 14.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 weeks, the Supplier may terminate this Agreement by giving 14 days' written notice to the Customer.

15. ASSIGNMENT AND OTHER DEALINGS

- 15.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 15.2 The Supplier may at any time assign, mortgage, charge, delegate, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

16. WAIVER

- 16.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 16.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law (save where it expressly excludes rights at law).

18. SEVERANCE

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

18.2 If any provision or part-provision of this Agreement is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. ENTIRE AGREEMENT

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

19.2 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. CONFLICT

20.1 If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedules, the provisions of this Agreement shall prevail.

20.2 If there is any inconsistency between any of the provisions of the Order and the provisions of any other part of this Agreement, the provisions of the Order shall prevail.

21. NO PARTNERSHIP OR AGENCY

21.1 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 party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

21.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22. THIRD PARTY RIGHTS

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

23. NOTICES

23.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

23.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

23.1.2 sent by email to the email address specified in the Order.

23.2 Any notice shall be deemed to have been received:

23.2.1 if delivered by hand, at the time the notice is left at the proper address;

23.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or

23.2.3 if sent if sent by email, at the time of transmission, or, if this time falls outside Business Hours, when Business Hours resume.

23.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24. GOVERNING LAW

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.

25. JURISDICTION

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.

THIS AGREEMENT has been entered into on the date stated at the beginning of it.

SCHEDULE 1

Resale of Software

BACKGROUND

The Supplier is a reseller of certain software applications on behalf of the authors thereof, who make it available to subscribers either via the internet or by installation onto the Customer's hardware, in each case on a pay-per-user basis. Save where indicated, the provisions of this Schedule 1 will apply equally both to software made available via the internet and software installed on the Customer's hardware.

1. INTERPRETATION

The definitions and rules of interpretation in the main body of this Agreement apply equally to this Schedule, along with the following additional definitions:

"Author" means the person or entity that has developed the Software in respect of which the Supplier is the reseller under this Schedule.

"Authorised Users" means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software and the Documentation, as further described in paragraph 3.

"Documentation" means the document(s) made available by the Author from time to time which sets out a description of the Software and the user instructions for the Software.

"Effective Date" means the date on which the EULA is accepted by the Customer.

"EULA" means the end user licence agreement required by the Author.

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

"Initial Subscription Term" means the initial term of the subscription to the Services, which shall be 12 months from the Effective Date unless the Order states otherwise.

"Maintenance Release" means release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software.

"Renewal Period" means the period described in paragraph 11.

"Software" means the computer programs or online software applications provided by the Supplier under this Schedule as a reseller for the Author.

"Subscription Fees" means the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Order.

"Subscription Term" means the Initial Subscription Term together with any subsequent Renewal Periods.

"User Subscriptions" means the user subscriptions purchased by the Customer under this Schedule, which entitle Authorised Users to access and use the Software and the Documentation in accordance with this Agreement.

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

"Vulnerability" means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

2. DELIVERY AND INSTALLATION AND/OR ACCESS

2.1 In respect of Software to be made available via the internet:

- 2.1.1** The Supplier shall procure the activation of the initial User Subscriptions in accordance with this Schedule;
- 2.1.2** The Supplier shall confirm to the Customer once the initial User Subscriptions have been successfully activated; and

- 2.1.3 The Customer shall be deemed to have accepted the Software if either (i) it fails to reasonably object in writing within 2 Business Days of the Supplier's confirmation under paragraph 2.1.2; or (ii) it commences operational use of the Software.
- 2.2 In respect of Software to be installed onto the Customer's hardware:
 - 2.2.1 The Supplier shall electronically deliver and install on the Customer's equipment one copy of the Software as soon as is reasonably practicable after the date of the Agreement (or such other date or period as is agreed in the Order or Project Plan);
 - 2.2.2 The Supplier shall confirm to the Customer once the Software has been successfully installed; and
 - 2.2.3 The Customer shall be deemed to have accepted the Software if either (i) it fails to reasonably object in writing within 2 Business Days of the Supplier's confirmation under paragraph 2.2.2; or (ii) it commences operational use of the Software.

3. USER SUBSCRIPTIONS

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with this Schedule, the restrictions set out in this clause 3, the other terms and conditions of this Agreement and the EULA, the Supplier hereby agrees to procure that the Author grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Software and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
 - 3.2.1 the maximum number of Authorised Users that it authorises to access and use the Software and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time (or shall not exceed the maximum number of concurrent Authorised Users where concurrent subscription is specified in the Order);
 - 3.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software and/or Documentation;
 - 3.2.3 each Authorised User shall keep secure access credentials for their use of the Software and Documentation, that such access credentials shall be changed no less frequently

than the EULA requires and that each Authorised User shall keep their access credentials confidential;

3.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;

3.2.5 it shall permit the Supplier or the Supplier's designated auditor to audit the Software in order to establish the name and access credentials of each Authorised User and the Customer's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

3.2.6 if any of the audits referred to in paragraph 3.2.5 reveal that any access credentials has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such access credentials and the Supplier shall not issue any new access credentials to any such individual; and

3.2.7 if any of the audits referred to in paragraph 3.2.5 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Order within 10 Business Days of the date of the relevant audit.

3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software that:

3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

3.3.2 facilitates illegal activity;

3.3.3 depicts sexually explicit images;

3.3.4 promotes unlawful violence;

3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

3.3.6 is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

3.4 The Customer shall not:

3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:

3.4.1.1 attempt to copy, modify, duplicate, create derivative software or services from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

3.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

3.4.2 access all or any part of the Software and Documentation in order to build a product or service which competes with the Software and/or the Documentation; or

3.4.3 use the Software and/or Documentation to provide software or services to third parties; or

3.4.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or Documentation available to any third party except the Authorised Users, or

3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Software and/or Documentation, other than as provided under this paragraph 3;

3.4.6 introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems; or

3.4.7 act otherwise than in accordance with the EULA.

3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

3.6 The rights provided under this paragraph 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. ADDITIONAL USER SUBSCRIPTIONS

- 4.1 Subject to paragraphs 4.2 and 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions and the Supplier shall procure that the Author grants access to the Software and the Documentation to such additional Authorised Users in accordance with the provisions of this Schedule.
- 4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier. The Supplier shall confirm the price for meeting such request, and provided that the Customer accepts that price the Supplier shall use reasonable endeavours to procure that the Author activates the additional User Subscriptions within a reasonable time of payment by the Customer of the applicable price.

5. SOFTWARE & MAINTENANCE RELEASES

- 5.1 The Customer acknowledges that the Supplier is reselling the Software on the subscription basis set out in this Schedule, with the Software being provided by the Author.
- 5.2 As such, the Customer acknowledges and irrevocably agrees that:
- 5.2.1 the Supplier is not responsible for the availability or functionality (or lack thereof) of the Software, or any perceived defect or deficiency therein;
 - 5.2.2 the Customer's sole right of recourse in respect of any lack of availability or functionality thereof, or perceived defect or deficiency therein, shall be against the Author; and
 - 5.2.3 The Customer's rights in respect of the Author shall be as set out in the EULA.
- 5.3 Different pieces of Software re-sold by the Supplier will have different protocols in respect of the installation of Maintenance Releases. For certain pieces of Software, Maintenance Releases may be installed automatically by the Author outside the control of the Supplier, or may be mandatory for the Supplier to install to meet its obligations to the Author. In other cases, their installation may be optional, and the Supplier does not accept any obligation to notify the Customer of such optional Maintenance Releases. If the Customer wishes to clarify its position in respect of Maintenance Releases for any particular piece of Software, it must contact the Supplier.

6. THIRD PARTY PROVIDERS

The Customer acknowledges that the Software may enable or assist it to access the website content of, correspond with, and purchase products and Software from, third parties (including

without limitation the Author) via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and the Supplier is not a party thereto. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Software.

7. SUPPLIER'S WARRANTIES & EXCLUSIONS

7.1 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Schedule.

7.2 The Supplier:

7.2.1 does not warrant that:

7.2.1.1 the Customer's use of the Software will be uninterrupted or error-free; or

7.2.1.2 that the Software, Documentation and/or the information obtained by the Customer through the Software will meet the Customer's requirements; or

7.2.1.3 the Software will be free from Vulnerabilities or Viruses; or

7.2.1.4 the Documentation or Software will comply with any Heightened Cybersecurity Requirements.

7.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products, services and/or software which are similar to those provided under this Agreement.

8. CUSTOMER'S OBLIGATIONS

8.1 In addition to the obligations set out in the main body of this Agreement, the Customer shall:

8.1.1 ensure that the Authorised Users use the Software and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

8.1.2 ensure that its network and systems comply with the relevant specifications provided by the Supplier or Author from time to time;

8.1.3 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Author's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and

8.1.4 in respect of hosting (for Software not installed on the Customer's hardware):

8.1.4.1 where the Order indicates that hosting will be provided by the Supplier separately from the resale of Software under this Schedule, the Customer shall comply with its obligations under Schedule 2 in respect of such hosting;

8.1.4.2 where the Order indicates that hosting will be resold to the Customer by the Supplier as part of a package from the Author along with the applicable Software, then the Customer will comply with any and all requirements and recommendations of both the Supplier and the Author in respect of such hosting; or

8.1.4.3 where the Order indicates that hosting will be arranged by the Customer otherwise than via the Supplier, then the Customer shall provide and/or procure the provision of (as applicable) such cloud-hosting and related matters as are required for the ongoing operation of the Software (it being expressly acknowledged that the Supplier is not required to provide any such cloud-hosting under this Agreement).

8.2 The Customer acknowledges that access to the Software may be withheld by the Author for non-compliance with the EULA.

9. CHARGES AND PAYMENT

- 9.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this paragraph 9 and the Order (and references to Charges in the main body of the Agreement shall, in respect of Services provided under this Schedule, be a reference to the Subscription Fees).
- 9.2 The Customer shall provide to the Supplier approved invoicing information acceptable to the Supplier. The Supplier shall invoice the Customer:
- 9.2.1 on or after the date on which the Agreement takes effect, for the Subscription Fees payable in respect of the Initial Subscription Term; and
- 9.2.2 subject to paragraph 11.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,
- and the Customer shall pay each invoice within 14 days after the date of such invoice (and the Initial Subscription Term will not commence until payment has been made in cleared funds for the sum invoiced under paragraph 9.2.1).
- 9.3 If the Supplier has not received a payment on or before the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier may, without liability to the Customer, disable the Customer's access credentials, account and access to all or part of the Software and the Supplier shall be under no obligation to provide or procure the provision of any or all of the Software while the invoice(s) concerned remain unpaid.
- 9.4 For the avoidance of doubt, the installation and related work of the Supplier's personnel shall be provided (and charged) in accordance with Schedule 4 of this Agreement, and is not covered by the Subscription Fees.

10. PROPRIETARY RIGHTS

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

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

11. TERM AND TERMINATION

- 11.1 The Subscription under this Schedule 1 shall commence on the Effective Date (or such other date as the parties agree in writing) and shall continue for the Initial Subscription Term and, thereafter, it shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- 11.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Subscription under this Schedule shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- 11.1.2 otherwise terminated in accordance with the provisions of this Agreement.

SCHEDULE 2

Hosting Services

BACKGROUND

In respect of certain Software either re-sold by the Supplier under Schedule 1, the Order may also state that the Supplier is providing separate hosting services. Where so stated, the hosting services will be provided under this Schedule 2.

1. INTERPRETATION

The definitions and rules of interpretation in the main body of this Agreement apply equally to this Schedule, along with the following additional definitions:

"Author" means the person or entity that has developed any Software in respect of which the Supplier is the reseller under Schedule 1.

"Fee" means the fee payable by the Customer to the Supplier as set out in the Order.

"Heightened Cybersecurity Requirements" means any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or its end users relating to security of network and information systems and security breach and incident reporting requirements, which may include the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

"Initial Hosting Term" means the initial term of the hosting of the Software, which shall be 12 months from the Effective Date under Schedule 1 or Acceptance Date under Schedule 3 (as applicable), unless the Order states otherwise.

"Maintenance Release" means release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software.

"Renewal Period" means the period described in paragraph 4.

"Software" means the computer program(s) or online software applications listed in the Order (including any Maintenance Release which is acquired by the Customer during the application of this Schedule), which is/are to be the subject of the hosting Services to be provided under this Schedule.

2. HOSTING

- 2.1 The Supplier shall provide the following in respect of the Software during the Initial Hosting Term and any Renewal Period:
- 2.1.1 a virtual server on which the applicable Software is provisioned;
 - 2.1.2 a series of databases on which the Customer's data is located; and
 - 2.1.3 back-ups of the Customer's data in line with the Author's recommended practice.
- 2.2 The Supplier shall have no responsibility for any lack of availability or accessibility of the Software or Customer data arising out of or relating to: (i) downtime (including update windows) required or implemented by the applicable Author; (ii) any failure by the Customer to comply with any part of this Agreement, or (iii) which could only have been avoided by the imposition of Heightened Cybersecurity Requirements.

3. CHARGES AND PAYMENT

- 3.1 The Customer shall pay the Fee to the Supplier in accordance with this paragraph 3 and the Order (and references to Charges in the main body of the Agreement shall, in respect of Services provided under this Schedule, be a reference to the Fee).
- 3.2 The Customer shall provide to the Supplier approved invoicing information acceptable to the Supplier. The Supplier shall invoice the Customer:
- 3.2.1 on or after the date on which the Agreement becomes effective, for the Fee payable in respect of the Initial Hosting Term; and
 - 3.2.2 subject to paragraph 4.1, at least 30 days prior to each anniversary of the Effective Date for the Fee payable in respect of the next Renewal Period,
- and the Customer shall pay each invoice monthly by direct debit on the 20th day of each calendar month (and the Initial Hosting Term will not commence until payment has been made in cleared funds for the sum invoiced under paragraph 3.2.1).
- 3.3 If the Supplier has not received a payment on or before the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier may, without liability to the Customer, disable the Customer's access credentials, account and access to all or part of the Software and the Supplier shall be under no obligation to provide any or all of the Software while the invoice(s) concerned remain unpaid.

4. TERM AND TERMINATION

4.1 The Services under this Schedule 2 shall commence on the Effective Date under Schedule 1 or Acceptance Date under Schedule 3 (as applicable) and shall continue for the Initial Hosting Term and, thereafter, it shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

4.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Hosting Term or any Renewal Period, in which case the Subscription under this Schedule shall terminate upon the expiry of the applicable Initial Hosting Term or Renewal Period; or

4.1.2 otherwise terminated in accordance with the provisions of this Agreement.

5. SUPPLIER'S WARRANTIES

5.1 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Schedule.

5.2 The Supplier:

5.2.1 does not warrant that:

5.2.1.1 the Customer's use of and access to the Software will be uninterrupted or error-free; or

5.2.1.2 the Customer's use of and access to the Software will be free from Vulnerabilities or Viruses; or

5.2.1.3 the Customer's use of and access to the Software will comply with any Heightened Cybersecurity Requirements.

5.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services provided under this Schedule may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

SCHEDULE 3

Software Development (non-resale)

BACKGROUND

- (A) The Supplier is the entire legal and beneficial owner and licensor of the Software and is willing to make it available to the Customer on the terms of this Schedule.
- (B) The Software may be made available via the internet or installed on the Customer's hardware, in each case on a pay-per-user subscription basis.

1. INTERPRETATION

The definitions and rules of interpretation in the main body of this Agreement apply equally to this Schedule, along with the following additional definitions:

"Acceptance Date" means the date on which the Customer accepts, or is deemed to have accepted, the Software under paragraph 2 hereof.

"Authorised Users" means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Software and the Documentation, as further described in paragraph 3.

"Documentation" means the document made available by the Supplier from time to time which sets out a description of the Software and the user instructions for the Software.

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

"Initial Subscription Term" means the initial term of the subscription to the Services, which shall be 12 months from the Acceptance Date unless the Order states otherwise.

"Maintenance Release" means release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software.

"Renewal Period" means the period described in paragraph 11.

"Software" means the computer programs or online software applications provided by the Supplier under this Schedule.

"Subscription Fees" means the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Order.

"Subscription Term" means the Initial Subscription Term together with any subsequent Renewal Periods.

"User Subscriptions" means the user subscriptions purchased by the Customer under this Schedule which entitle Authorised Users to access and use the Software and the Documentation in accordance with this Agreement.

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

"Vulnerability" means a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

2. DELIVERY AND INSTALLATION AND/OR ACCESS

2.1 In respect of Software to be made available via the internet:

2.1.1 The Supplier shall procure the activation of the initial User Subscriptions in accordance with this Schedule;

2.1.2 The Supplier shall confirm to the Customer once the initial User Subscriptions have been successfully activated; and

2.1.3 The Customer shall be deemed to have accepted the Software if either (i) it fails to reasonably object in writing within 2 Business Days of the Supplier's confirmation under paragraph 2.1.2; or (ii) it commences operational use of the Software.

2.2 In respect of Software to be installed onto the Customer's hardware:

- 2.2.1 The Supplier shall electronically deliver and install on the Customer's equipment one copy of the Software as soon as is reasonably practicable after the date of the Agreement (or such other date or period as is agreed in the Order or Project Plan);
- 2.2.2 The Supplier shall confirm to the Customer once the Software has been successfully installed; and
- 2.2.3 The Customer shall be deemed to have accepted the Software if either (i) it fails to reasonably object in writing within 2 Business Days of the Supplier's confirmation under paragraph 2.2.2; or (ii) it commences operational use of the Software.

3. USER SUBSCRIPTIONS

- 3.1 Subject to the Customer purchasing the User Subscriptions in accordance with this Schedule, the restrictions set out in this clause 3, the other terms and conditions of this Agreement and the EULA, the Supplier hereby agrees grant to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Software and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
 - 3.2.1 the maximum number of Authorised Users that it authorises to access and use the Software and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time (or shall not exceed the maximum number of concurrent Authorised Users where concurrent subscription is specified in the Order);
 - 3.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software and/or Documentation;
 - 3.2.3 each Authorised User shall keep secure access credentials for their use of the Software and Documentation, that such access credentials shall be changed no less frequently than the Documentation requires and that each Authorised User shall keep their access credentials confidential;
 - 3.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;

- 3.2.5 it shall permit the Supplier or the Supplier's designated auditor to audit the Software in order to establish the name and access credentials of each Authorised User and the Customer's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 3.2.6 if any of the audits referred to in paragraph 3.2.5 reveal that any access credentials has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such access credentials and the Supplier shall not issue any new access credentials to any such individual; and
 - 3.2.7 if any of the audits referred to in paragraph 3.2.5 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Order within 10 Business Days of the date of the relevant audit.
- 3.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software that:
- 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 3.3.2 facilitates illegal activity;
 - 3.3.3 depicts sexually explicit images;
 - 3.3.4 promotes unlawful violence;
 - 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 3.3.6 is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.4 The Customer shall not:

- 3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - 3.4.1.1 attempt to copy, modify, duplicate, create derivative software or services from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 3.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 3.4.2 access all or any part of the Software and Documentation in order to build a product or service which competes with the Software and/or the Documentation; or
 - 3.4.3 use the Software and/or Documentation to provide Software to third parties; or
 - 3.4.4 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or Documentation available to any third party except the Authorised Users, or
 - 3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Software and/or Documentation, other than as provided under this paragraph 3; or
 - 3.4.6 introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.
- 3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Software and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 3.6 The rights provided under this paragraph 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. ADDITIONAL USER SUBSCRIPTIONS

- 4.1 Subject to paragraphs 4.2 and 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions and the Supplier shall grant access to the Software and the Documentation to such additional Authorised Users in accordance with the provisions of this Schedule.

- 4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier. The Supplier shall confirm the price for meeting such request, and provided that the Customer accepts that price the Supplier shall use reasonable endeavours to procure that the Author activates the additional User Subscriptions within a reasonable time of payment by the Customer of the applicable price.

5. MAINTENANCE RELEASES

Different pieces of Software re-sold by the Supplier will have different positions in respect of the installation of Maintenance Releases. For certain pieces of Software, Maintenance Releases may be installed automatically by the Author outside the control of the Supplier, or may be mandatory for the Supplier to install to meet its obligations to the Author. In other cases, their installation may be optional, and the Supplier does not accept any obligation to notify the Customer of such optional Maintenance Releases. If the Customer wishes to clarify its position in respect of Maintenance Releases for any particular piece of Software, it must contact the Supplier.

6. THIRD PARTY PROVIDERS

The Customer acknowledges that the Software may enable or assist it to access the website content of, correspond with, and purchase products and Software from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and the Supplier is not a party thereto. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Software.

7. SUPPLIER'S WARRANTIES & EXCLUSIONS

- 7.1 The Supplier warrants that the Software will conform in all material respects to any specification provided in writing by the Supplier for a period of 90 days from the Acceptance Date ("**Warranty Period**"). If, within the Warranty Period, the Customer notifies the Supplier in writing of any defect or default in the Software in consequence of which it fails to conform in all material

respects to any such specification, and such defect or fault does not result from the Customer (or anyone acting with the authority of the Customer) having amended the Software or used it otherwise than as permitted by this Schedule, or outside the purpose or context for which it was designed, or in combination with any other software not supplied by the Supplier, or on systems or devices which do not meet the Supplier's recommendations, then the Supplier shall (at its option) do one of the following:

- 7.1.1 Repair the Software;
- 7.1.2 Replace the Software;
- 7.1.3 Terminate the Services provided under this Schedule immediately by notice in writing to the Customer and refund any of the Fee paid in advance for a period after such termination;

provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of the defect or fault, or sufficient information to allow the Supplier to re-create such defect or fault.

7.2 The Supplier:

- 7.2.1 does not warrant that:
 - 7.2.1.1 the Customer's use of the Software will be uninterrupted or error-free; or
 - 7.2.1.2 that the Software, Documentation and/or the information obtained by the Customer through the Software will meet the Customer's requirements; or
 - 7.2.1.3 the Software will be free from Vulnerabilities or Viruses; or
 - 7.2.1.4 the Documentation or Software will comply with any Heightened Cybersecurity Requirements.
- 7.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 7.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products, services and/or software which are similar to those provided under this Agreement.

- 7.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Schedule or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

8. CUSTOMER'S OBLIGATIONS

- 8.1 In addition to the obligations set out in the main body of this Agreement, the Customer shall:

8.1.1 ensure that the Authorised Users use the Software and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

8.1.2 ensure that its network and systems comply with the relevant specifications provided by the Supplier or Author from time to time;

8.1.3 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet; and

8.1.4 in respect of hosting (for Software not installed on the Customer's hardware):

8.1.4.1 where the Order indicates that hosting will be provided by the Supplier separately from the resale of Software under this Schedule, the Customer shall comply with its obligations under Schedule 2 in respect of such hosting; or

8.1.4.2 where the Order indicates that hosting will be arranged by the Customer otherwise than via the Supplier, then the Customer shall provide and/or procure the provision of (as applicable) such cloud-hosting and related matters as are required for the ongoing operation of the Software (it being expressly acknowledged that the Supplier is not required to provide any such cloud-hosting under this Agreement).

- 8.2 The Customer acknowledges that access to the Software may be withheld by the Supplier for non-compliance with this Schedule.

9. CHARGES AND PAYMENT

- 9.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this paragraph 9 and the Order (and references to Charges in the main body of the Agreement shall, in respect of Services provided under this Schedule, be a reference to the Subscription Fees).
- 9.2 The Customer shall provide to the Supplier approved purchase order information acceptable to the Supplier. The Supplier shall invoice the Customer:
- 9.2.1 on or after the date on which the Agreement becomes effective, for the Subscription Fees payable in respect of the Initial Subscription Term; and
- 9.2.2 subject to paragraph 11.1, at least 30 days prior to each anniversary of the Acceptance Date for the Subscription Fees payable in respect of the next Renewal Period,
- and the Customer shall pay each invoice within 14 days after the date of such invoice (and the Initial Subscription Term will not commence until payment has been made in cleared funds for the sum invoiced under paragraph 9.2.1).
- 9.3 If the Supplier has not received a payment on or before the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier may, without liability to the Customer, disable the Customer's access credentials, account and access to all or part of the Software and the Supplier shall be under no obligation to provide any or all of the Software while the invoice(s) concerned remain unpaid.
- 9.4 For the avoidance of doubt, the installation and related work of the Supplier's personnel shall be provided (and charged) in accordance with Schedule 4 of this Agreement, and is not covered by the Subscription Fees.

10. PROPRIETARY RIGHTS

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software or the Documentation.
- 10.2 The Supplier confirms that it has all the rights in relation to the Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11. TERM AND TERMINATION

11.1 The Subscription under this Schedule 3 shall commence on the Acceptance Date (or such other date as the parties shall agree in writing) and shall continue for the Initial Subscription Term and, thereafter, it shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

11.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case the Subscription under this Schedule shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

11.1.2 otherwise terminated in accordance with the provisions of this Agreement.

SCHEDULE 4

Supply of Technical Services (excluding Support Services)

BACKGROUND

- (A) The Customer may have included one or more of the Subscriptions under Schedules 1, 2 or 3 in its Order.
- (B) Where there is an existing Subscription(s), the implementation, installation, training and so forth shall comprise Technical Services and are not part of the Subscription(s). Such Technical Services are provided under this Schedule 4.
- (C) The Customer may also order Technical Services without any underlying Subscription.

1. INTERPRETATION

The definitions and rules of interpretation in the main body of this Agreement apply equally to this Schedule, along with the following additional definitions:

"Author" means the person or entity that has developed that part of the Software (if any) in respect of which the Supplier is or was the reseller under Schedule 1.

"Pre-existing Materials" means materials which existed before the commencement of the Project.

"Project" means the project as described in the Project Plan.

"Project Milestone" means a date by which a part of the Project is estimated to be completed, as set out in the Project Plan (where applicable).

"Project Plan" means the detailed plan describing the Project and setting out the estimated timetable (including where applicable any Project Milestones) and responsibilities of each of the parties for, or in connection with, the provision of the Technical Services by the Supplier in accordance with this Agreement.

"Technical Services" means the Services to be provided by the Supplier under this Schedule.

2. SUPPLIER'S OBLIGATIONS

- 2.1 The Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Project Plan. Where no Project Plan is included with the Order, it shall be completed and agreed by the parties following the Agreement coming into effect, and prior to further Technical Services being performed.

- 2.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 2.3 The Customer acknowledges that the Supplier cannot compel any action to be taken (or not taken) by the Author, and that nothing in this Schedule shall be construed as introducing such a compulsion.

3. CUSTOMER'S OBLIGATIONS

- 3.1.1 provide in a timely manner such information as the Supplier may request, and ensure that such information is complete and accurate in all respects; and
- 3.1.2 be responsible (at its own cost) for preparing the relevant premises and hardware for the supply of the Services.
- 3.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, subcontractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it, subject to the Supplier confirming such costs, charges and losses to the Customer in writing. Such losses shall include, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.
- 3.3 The delivery date of any implementation, consultancy and/or training services will be agreed in advance between the Supplier and the Customer. If the Customer wishes to cancel or postpone a pre-arranged service, it shall provide at least ten clear days' notice prior to the commencement of the agreed date of service delivery. If the Customer provides less than five clear days' notice, the Supplier may charge an administration fee of 100% of the agreed fee for the cancelled or postponed services. If the Customer provides between 5 and 10 clear days' notice, the Supplier may charge an administration fee of 50% of the agreed fee for the cancelled or postponed services.

4. CHARGES AND PAYMENT

- 4.1 Unless expressly stated otherwise in the Order, the Services are provided on a time-and-materials basis. In this respect the Supplier shall invoice the Customer at such instances as the Supplier deems appropriate (together with VAT where appropriate), calculated as provided in this paragraph 4 and clause 7 of the Agreement.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 All Intellectual Property Rights and all other rights in the Technical Services and any Deliverables arising therefrom shall be owned by the Supplier. The Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Technical Services as is envisaged by the parties. If the Agreement or provision of the Technical Services is terminated for any reason this licence will automatically terminate.
- 5.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

SCHEDULE 5

Support Services

BACKGROUND

The Supplier has provided the Software to the Customer on a subscription basis, either as a reseller or as the licensor, under the terms of the Subscription (under Schedule 1 or 3 as applicable). In connection therewith, the Supplier has agreed to provide support and maintenance for such Software on the terms set out in this Schedule.

AGREED TERMS

1. INTERPRETATION

The definitions and rules of interpretation in the main body of this Agreement apply equally to this Schedule, along with the following additional definitions:

"Author" means the person or entity that has developed that part of the Software (if any) in respect of which the Supplier is or was the reseller under Schedule 1.

"Contract Year" means any 12-month period ending on any anniversary of the Support Services Start Date.

"Critical Fault" means a reproducible fault which substantially hinders or prevents the Customer from using a material part of the functionality of the Software.

"Documentation" means the documents provided by the Supplier for the Software, in either printed text or machine-readable form, including the technical documentation, program specification and operations manual.

"Maintenance Release" means a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software.

"Modification" means any Maintenance Release which is acquired by the Customer.

"Non-Critical Fault" means any reproducible fault in the Software other than a Critical Fault.

"Software" means has the same meaning as in the applicable Subscription.

"Support Services" means the services to be provided by the Supplier to the Customer under this Schedule 5.

"Support Services Start Date" means either the Effective Date under Schedule 1 or the Acceptance Date under Schedule 3, as applicable to the relevant Software.

"Support Staff" means those individuals who perform the Supplier's obligations under this Schedule.

"Supported Software" has the meaning set out in paragraph 2.1.

2. SUPPORTED SOFTWARE

2.1 The Supported Software is:

- 2.1.1 the Software;
- 2.1.2 any Modification which is acquired by the Customer (whether under this Agreement or any other agreement between the Supplier and the Customer) during the course of the applicable Subscription and which accordingly becomes part of the software defined as the Software under the applicable Subscription; and
- 2.1.3 any other software which the Supplier and Customer agree should be Supported Software for the purposes of this Agreement.

2.2 In relation to Maintenance Releases:

- 2.2.1 the Supplier may from time to time make Maintenance Releases available to the Customer (where applicable, where such Maintenance Releases are made available to the Supplier by the Author), subject to agreement between the Supplier and the Customer as to the cost of the provision of such Maintenance Release; and
- 2.2.2 if the Customer fails to acquire and install a Maintenance Release within one month of the Supplier's notifying the Customer that such Maintenance Release is available for installation, the Supplier shall thereafter not be required to provide any Support Services under this Schedule in respect of a fault the cause of which would have been remedied by the acquisition and installation of the applicable Maintenance Release.

2.3 If the Supplier or Author (as applicable) releases a Maintenance Release and the Customer decides not to acquire and install such Maintenance Release, that decision shall not immediately give rise to any right to terminate the provision of Support Services, nor shall it immediately result in any adverse effect on the Support Services or the performance of the Supplier's obligations under this Agreement save as set out in paragraph 2.2.2. However, if the Supplier determines (acting reasonably) that the failure to acquire and install the Maintenance Release materially increases the cost or difficulty to the Supplier in providing the Support Services, then the Supplier may terminate the provision of Support Services by giving one month's written notice to the Customer.

3. THE SERVICES

3.1 In respect of the Support Services:

3.1.1 they shall be provided during the Business Hours and shall comprise:

3.1.1.1 a telephone, email and/or portal help desk to provide first-line technical support to users of the Supported Software; and

3.1.1.2 remote diagnosis and, where possible, correction of faults using remote access software;

3.1.2 the Supplier shall respond within 4 Business Hours (meaning, for example, that if contact was made at 3.30PM on one Business Day, the Supplier would respond by 10.30AM on the next Business Day). For the avoidance of doubt, this response is not required to resolve the issue in question and may simply set out a proposed timescale or process for investigating and resolving the fault;

3.1.3 if additional on-site support is required in any month it may be provided by the Supplier at its option at its standard rates (as varied from time to time);

3.1.4 where a Non-Critical Fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release the Supplier may decline to provide assistance in respect of that Non-Critical Fault; and

3.1.5 the Supplier shall supply to the Customer all revisions to the Documentation which are necessary in order to reflect any Modification acquired by the Customer upon their release by the Author (in respect of Licences under Schedules 1 and 2 only).

3.2 The Supplier may, on prior notice to the Customer, make changes to the Support Services, provided such changes do not have a material adverse effect on the Customer's business operations.

3.3 The Supplier shall have no obligation to provide the Support Services where faults arise from:

3.3.1 misuse, incorrect use of or damage to the Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;

3.3.2 failure to maintain the necessary environmental conditions for use of the Software;

3.3.3 use of the Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;

- 3.3.4 relocation or installation of the Software by any person other than the Supplier or a person acting under the Supplier's instructions;
 - 3.3.5 any breach of the Customer's obligations under this Agreement howsoever arising or having the Software maintained by a third party;
 - 3.3.6 any Modification not authorised by the Supplier;
 - 3.3.7 any act or omission of the Author; or
 - 3.3.8 operator error.
- 3.4 The Customer acknowledges that the Supplier cannot compel any action to be taken (or not taken) by the Author, and that nothing in this Schedule shall be construed as introducing such a compulsion.

4. SUPPORT STAFF

The Supplier shall provide sufficient Support Staff to fulfil its obligations under the terms of this Schedule. The Support Staff shall be suitably trained and experienced in the support and maintenance of the Supported Software.

5. FURTHER TERMS RELATING TO THE SERVICES

- 5.1 The Supplier's obligation to provide on-site Support Services shall apply only where and to the extent set out in the Order.
- 5.2 The Supplier shall ensure that, while on the Customer's premises, the Support Staff and all other persons who enter such premises with the authority of the Supplier for the purpose of, or in connection with, this Schedule, adhere to the Customer's security procedures and health and safety regulations, as from time to time notified to the Supplier or otherwise brought to the notice of the Supplier or such persons. The Customer may remove or refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, the Supplier shall incur no liability for any delay in performing or failure to perform its obligations under this Schedule as a result of compliance with the terms of this paragraph 5.

6. CHARGES

- 6.1 In consideration of the provision of the Support Services, the Customer shall pay the Charges set out in the Order annually in advance, on or before the Support Services Start Date and each anniversary thereof.

- 6.2 The Customer shall pay all costs (at the Supplier's then prevailing rates) and reasonable expenses incurred by the Supplier for work carried out by the Supplier in connection with any fault which is not covered by this Schedule.
- 6.3 The Customer shall reimburse any expenses incurred by the Supplier where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.

7. THE CUSTOMER'S RESPONSIBILITIES

- 7.1 Without prejudice to the main body of this Agreement, the Customer shall provide the Supplier, the Support Staff and all other persons duly authorised by the Supplier with full, safe and uninterrupted access including remote access to the Customer's premises, systems, facilities and the Software as may reasonably be required for the purpose of performing the Support Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Business Hours. Where the Services are to be performed at any of the Customer's premises, the Customer shall provide adequate working space and office facilities (including telephone and internet access) for use by the Support Staff and take reasonable care to ensure their health and safety.
- 7.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.
- 7.3 The Customer shall nominate a manager to be available to liaise with, and respond to queries from, the Support Staff.
- 7.4 The Customer shall:
- 7.4.1 co-operate with the Supplier in performing the Support Services and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;
 - 7.4.2 report faults promptly to the Supplier; and
 - 7.4.3 keep, or procure that there are kept, full backup copies of all of its data (save to the extent that the keeping of such backups is the responsibility of the Supplier under Schedule 2).

- 7.5 The Customer shall indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Customer's breach of this Agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.
- 7.6 This Schedule does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights.

8. THE SUPPLIER'S WARRANTIES

- 8.1 The Supplier warrants to the Customer that:
- 8.1.1 the Support Services will be performed:
 - 8.1.1.1 in accordance with all laws and regulations which are directly applicable to the Supplier; and
 - 8.1.1.2 with reasonable skill and care;
 - 8.1.2 to the best of its knowledge and belief, any Deliverables will not infringe the UK Intellectual Property Rights of any third party; and
 - 8.1.3 at the Support Services Start Date, the Supplier has obtained and will maintain for the duration of the provision of Support Services all permissions, licences and consents necessary for the Supplier to perform the Support Services.
- 8.2 If, during the term of this Agreement, the Supplier receives written notice from the Customer of any breach by the Supplier of the representations and warranties contained in paragraph 8.1, the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate the provision of Support Services immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this Agreement during the Contract Year in which the termination occurs, less a reasonable charge for the Support Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Supplier to comply with its obligations under this paragraph 8.2. This clause sets out the Customer's sole and exclusive remedy and the Supplier's entire liability for breach of paragraph 8.1.
- 8.3 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.
- 8.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute,

common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.