



# aztech

IT Solutions

## SCHEDULE DOCUMENT

Managed IT Support / Managed Services

*Public*

## **MANAGED SERVICES AGREEMENT**

**BETWEEN**            **Aztech IT Solutions Ltd at Libra House, Sunrise Parkway, Linford Wood Business Park, Milton Keynes MK14 6PH (“Supplier”)**

**AND**                 **The “Customer” as stated in the service order form at The address stated in the service order form (“Customer”)**

### **BACKGROUND**

- A.     The Supplier and the Customer have agreed that the Supplier will provide the managed service to the Customer, in accordance with this agreement.
- B.     This Agreement includes this page (including the execution provisions below) and:
- The Schedule – summary information which includes pricing, term and other items;
  - Appendix – managed service details;
  - The terms and conditions; and
  - The GDPR Attachment.

All capitalised words used in this Agreement have the meaning given to them in clause 22 of the terms and conditions.

### **Executed as an agreement**

This document is executed as an agreement upon signature of the service order form.

## SCHEDULE

### 1. Supplier: Contact details

Physical Address:	Libra House, Sunrise Parkway, Linford Wood Business Park, Milton Keynes MK14 6PH
Email:	info@aztechit.co.uk

### 2. Customer: Contact details

Physical Address:	As stated in the service order form
Email:	As stated in the service order form

### 3. Key Contact Personnel

Supplier	Help Desk E: helpdesk@aztechit.co.uk T: 01908 571510 Directors E : info@aztechit.co.uk
Customer	As stated in the service order form

### 4. Account management

Reporting requirements	Weekly and monthly reporting will be provided
Account management meetings	Account management service review meetings will be held once per month or once per quarter depending on customer's requirements. Strategic technology roadmap meetings are held once a quarter.

### 5. Managed Service

Refer to attached Appendix for details of the Managed Service to be provided.

## 6. Pricing and payment

Pricing	<p>1. Pricing</p> <p>Pricing is set out and stated in the service order form. Standard managed support services are based on a per user and per device - per month basis.</p>
<p>**1. Pricing may increase due to increases in numbers of users and devices as described in this Agreement. Pricing may also be increased as described in 'Price increases' below.</p>	
Payment	<p>Monthly charges: Monthly in advance</p> <p>Other charges: Monthly in arrears</p> <p>Payment terms 30 days net following date of invoice.</p>
Price increases	<p>Where a fixed term applies, pricing may be increased by the Supplier for the next renewal term of the Managed Service, on six weeks' notice in writing to the Customer.</p> <p>Where no fixed term applies, the Supplier may increase pricing on six weeks' notice in writing to the Customer.</p>

## 7. Term

Commencement date:	Date of signing by both parties
Term:	<p>Agreement has a fixed term as follows:</p> <p>Initial term 12 Months unless otherwise stated in the service order form</p> <p>Renewal terms:</p> <p>On expiration of the initial term or any subsequent renewal term, this Agreement will automatically renew for the renewal term unless either party notifies the other party in writing 90 days before the renewal term date that they do not wish the Agreement to renew in which case the Agreement will terminate on expiration of the initial term or renewal term as applicable.</p> <p>Refer clause 13 of the attached terms and conditions.</p>

## 8. Order of precedence

Order of precedence:	If there is any inconsistency between the parts of this Agreement, the following order of precedence applies to the extent of that inconsistency (listed high to low priority):  (a) terms and conditions;  (b) the Schedule;  (c) the Appendix.
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## 9. Supplier's insurance

Professional indemnity insurance	(1) Limit of Liability (all Claims in the annual aggregate including Defense Costs) £2,000,000
Public liability insurance	(2) Limit of indemnity £5,000,000

## APPENDIX MANAGED SERVICE

### 1. Managed IT Environment

*In Scope (The Managed IT Environment that is In Scope for the Managed Service):*

The Managed Service relates to these third party products and applications. The Managed Service does not include a remedy for defective or faulty equipment or components, or failure of third party services. Where applicable, the Supplier can assist with escalating warranty and defective product/application issues to the relevant third party supplier.

The following items, as approved and confirmed by the Supplier on or prior to Commencement Date. Any changes to [work devices and related details, servers or network components] following Commencement Date must be procured and setup by Supplier, or otherwise reviewed and approved by the Supplier. Procuring and setup work, and review/approval work is outside of the scope of this Agreement.

#### Agreement Inclusion List

As part of this agreement, we endeavour to include all of the day-to-day IT support items that are typically required to run a typical business technology baseline infrastructure. You can see a list of all of the items we will cover under this Appendix.

It's important to note that anything not included in Appendix B is explicitly excluded from your agreement. For any other services we will provide a quote for you to review and approve before proceeding. From time to time, we may provide support for items not explicitly included in Appendix B without charge however, we will do this at our sole discretion.

Description	Frequency	Included
<b>Consulting</b>		
Technology Business Review (TBR)	See Terms	YES
End-User Office365 Training Program	24x7x365 Via Portal	YES
<b>Desktop, Laptops and Servers</b>		
Setup New Profiles on Desktops and Laptops	As Needed	YES
Add / Edit / Delete User Accounts	As Needed	YES
Forgotten Password Resets	As Needed	YES
Archive Old User Accounts (Backup Email & Files)	As Needed	YES
Setup & Maintain Security Groups	As Needed	YES
Setup & Maintain Network Drives	As Needed	YES
Restore Files from Backups (1)	As Needed	YES
Troubleshoot Operating System Not Working	As Needed	YES
Troubleshoot Microsoft Office Not Working	As Needed	YES
Troubleshoot Anti-Virus Not Working	As Needed	YES

Reboot Servers	As Needed	YES
Troubleshoot Hardware Issues (3)	As Needed	YES
Hard Drive Clean-up (Remove Temp & Unnecessary Files)	As Needed	YES
Warranty Claim Processing (3)	As Needed	YES
Microsoft Patch Management (Service Packs & Updates)	Daily	YES
Update Approved 3rd Party Applications (Adobe Flash, Adobe Reader, PDF Creator, Java, 7-Zip)	Daily	YES
Monitor all Critical Server and Computer Services and Fix	24x7x365	YES
Monitor Anti-Virus Running & Protection Enabled	24x7x365	YES
Monitor Anti-Virus Definitions Updating Correctly	24x7x365	YES
Monitor Anti-Malware Running & Protection Enabled	24x7x365	YES

Monitor Anti-Malware Definitions Updating Correctly	24x7x365	YES
Monitor Hard Disk Health + Space & Defrag if Necessary	24x7x365	YES
Monitor High CPU Usage	24x7x365	YES
Monitor Security and Event Logs	24x7x365	YES
Roll out our Best Practices Security Policies	On-Going	YES
<b>Backups and Disaster Recovery</b>		
Monitor Server and Computer Backups (1)	24x7x365	YES
Troubleshoot Server and Computer Backup Failures (1)	As Needed	YES
Monitor Office365 Backups (1)	24x7x365	YES
Troubleshoot Office365 Backup Failures (1)	As Needed	YES
Manual Test Restore & Report of All Approved Backups (1)	Monthly	YES
<b>Printers</b>		
Clear & Reset Printer Queues	As Needed	YES
Troubleshoot Printer Issues	As Needed	YES
Add / Edit / Delete Printer Mapping Group Policies	As Needed	YES
Add / Edit / Delete Printer Drivers for Existing Printers	As Needed	YES
Troubleshoot Printer Hardware Issues (3)	As Needed	YES
Warranty Claim Processing (3)	As Needed	YES
<b>Network</b>		
Troubleshoot Internet Service Provider Issues & Outages	As Needed	YES
Troubleshoot Network Switch Issues	As Needed	YES
Troubleshoot Wi-Fi Access Point Issues	As Needed	YES
Update Wi-Fi SSID / Keys	As Needed	YES
Troubleshoot Router Issues	As Needed	YES
Troubleshoot Firewall Issues	As Needed	YES
Firewall Security Audit and Adjustment	Monthly	YES
Monitor Network Switches Operations & Availability	24x7x365	YES
Monitor Wi-Fi Access Points Operations & Availability	24x7x365	YES
Monitor Router Operations & Availability	24x7x365	YES
Monitor Firewall Operations & Availability	24x7x365	YES
Warranty Claim Processing (3)		
<b>Domain Names</b>		
Add / Edit / Delete MX Records	As Needed	YES
Add / Edit / Delete TXT Records	As Needed	YES
Add / Edit / Delete PTR Records	As Needed	YES

Add / Edit / Delete CNAME Records	As Needed	YES
Add / Edit / Delete A Records	As Needed	YES
<b>Mobile Phones &amp; Tablets</b>		
Configure Outlook or Mail App <sup>(2)</sup>	As Needed	YES
Configure Skype/Teams for Business App <sup>(2)</sup>	As Needed	YES
Configure OneDrive for Business App <sup>(2)</sup>	As Needed	YES
Configure Teams for Business App <sup>(2)</sup>	As Needed	YES
<b>Office365 / G-Suite</b>		
Add / Edit / Delete User Accounts	As Needed	YES
Add / Edit / Delete User and Security Groups	As Needed	YES
Add / Edit / Delete Shared Mailboxes	As Needed	YES
Add / Edit / Delete Distribution Groups	As Needed	YES
Forgotten Password Resets	As Needed	YES
Archive Old User Accounts (Backup Email & OneDrive)	As Needed	YES
Restore Files from Backups <sup>(1)</sup>	As Needed	YES
Install & Connect OneDrive Desktop Client <sup>(2)</sup>	As Needed	YES
Install & Connect Skype for Business Desktop Client <sup>(2)</sup>	As Needed	YES
Install & Connect Teams Desktop Client <sup>(2)</sup>	As Needed	YES
<b>IT Security</b>		
Install and update endpoint protection software	As Needed	YES
Add / Edit / Make Changes to Email Security Subscriptions and Services <sup>(2)</sup>	As Needed	YES
Add / Edit / Make Changes to Firewall & UTM Security Subscriptions and Services <sup>(2)</sup>	As Needed	YES
Assist with security breach and compromises as required	As Needed	YES

(1) Only applies to when using the Backup Platforms in our Recommended Technology Platform.

(2) This assumes that you already have the back-end systems and company-wide configurations all setup and configured for this product. If you don't, then We will discuss with You the scope of any potential Project and send You a separate Proposal for your review.

(3) As you can appreciate, it's hard to build a profitable and sustainable business offering "Unlimited Support" at a reasonable price for items that we didn't recommend, sell and install. As such, if the Hardware we are troubleshooting was not purchased from us and/or the device is not currently covered by the Manufacturer's warranty, a care pack or a maintenance agreement, then it is in Our sole discretion as to whether We will cover this work under the Scope of this Agreement or set it as Billable Out of Scope work.

#### Out of scope:

- Equipment that is not covered by warranty;
- All or any part of any home networks;
- Any application on a user's work device not approved by the Supplier;
- Equipment which is primarily for personal use (not for business purposes);
- Any machine where the operating system or application is not under support or extended support from the vendor for the Customer.

## 2. Change Control

2.1 Changes to the Managed IT Environment will be controlled by email or other written communication between the parties. Where a change to the Managed IT Environment requires a change to the pricing for the Managed Service, that pricing change will be notified by the Supplier to the Customer in writing and will be implemented and charged.



### 3. Managed Service Details

Managed Service	Managed Service Description
<b>Devices</b>	<ul style="list-style-type: none"><li>• Asset Management</li><li>• Device Management</li><li>• Device Support</li></ul>
<b>Help desk</b>	<ul style="list-style-type: none"><li>• Refer to Service Requests and Service Levels in sections 7 and 8 below.</li></ul>
<b>Servers</b>	<ul style="list-style-type: none"><li>• Asset Management</li><li>• Device Management</li><li>• Device Support</li></ul>
<b>Monitoring &amp; NOC</b>	<ul style="list-style-type: none"><li>• 24/7/365 Monitoring &amp; alerting</li><li>• Proactive workstation and server maintenance</li><li>• Backup Monitoring</li></ul>
<b>Patch Management</b>	<ul style="list-style-type: none"><li>• Management of Microsoft security updates and patches</li></ul>
<b>Account Management</b>	<ul style="list-style-type: none"><li>• Service review meetings</li><li>• Technology roadmap management</li></ul>

Third party products and services supplied to Customer: The Managed Service includes supply of third-party products and services (such as, by way of example only, (antivirus products). Third party products and services are supplied subject to the relevant third party's terms and conditions which are available on request from the Supplier. By signing this Agreement, the Customer is deemed to accept those third party terms and conditions and the Supplier is authorised to accept the third party terms and conditions on behalf of the Customer when the Supplier procures, installs and/or provides setup services for the Customer in respect of the third party products and services included in the Managed Service.

Third party products and services used by Supplier to provide Managed Service: The Supplier uses third party products and services to provide the Managed Service. For some of these third party services (such as remote monitoring and management tools, 'RMM'), an 'agent' is installed on the Customer's devices and other equipment (as applicable). The Customer acknowledges and consents to the use by the Supplier of such third party products and services, including the installation (where applicable) of an agent on the Customer's devices and other equipment. Where the relevant third party supplier's terms and conditions include terms and conditions requiring acceptance by the Customer (including for example to the installation of the agent), by signing this Agreement: 1) the Customer is deemed to accept those third party terms and conditions and 2) the Supplier is authorised to accept the third party terms and conditions on behalf of the Customer when the Supplier procures such third party services in respect of the Managed Service to be provided to the Customer and and/or, if applicable, when the Supplier installs the agent on the Customer's devices and other equipment (as applicable) in order to provide the Managed Service.

### 4. Out of scope

The following are out of scope for this Managed Service. Where services in relation to the following are provided by the Supplier, the services will be quoted in advance or charged at the Supplier's standard hourly rates.

Out of scope:

- (a) data restoration;
- (b) services required to investigate, diagnose and/or provide a remedy in relation to Exception Factors (refer section 6 below);
- (c) Structured cabling

## **5. Customer responsibilities**

The Customer must:

- (a) maintain support contracts with all relevant third party suppliers;
- (b) ensure there is no deliberate damage to any aspect of the Managed IT Environment;
- (c) notify the Supplier immediately when it becomes aware of any Incident, to prevent further issues.

## **6. Exception Factors**

The Supplier has no obligation to address or remedy an Incident where the Incident has arisen due to any of the following Exception Factors:

- (a) issues resulting from the Customer's use of infrastructure (including IaaS/PaaS), networks, devices, internet connections, software or services where the relevant infrastructure, network, device, software or service is not included in the Managed IT Environment;
- (b) the failure or poor performance of the Customer's power source and/or power supply;
- (c) any additions, changes or modifications made to the Customer's operating system, environment or equipment except where made or approved by the Supplier;
- (d) the Customer not acting on a recommendation from the Supplier (given in writing) that additions, changes or updates to the Managed IT Environment are required;
- (e) changes made by a third party provider of software, services or equipment;
- (f) any third party act, omission or circumstance including without limitation any cyberattack (and including any cyberattack on the systems or services used by the Supplier to provide the Managed Service) which results in unavailability of all or any section of the Managed IT Environment, whether malicious or not (other than where the third party is a subcontractor engaged by the Supplier) or any unauthorised access to the Managed IT Environment;
- (g) wilful damage by any person including without limitation any current or former member of the Customer's staff (employees and/or contractors);

- (h) any situation, event, outage, defect or other factor (except where the Supplier has directly caused that situation, event, outage, defect, or other factor), which impacts the availability or proper functioning of any component of the Managed IT Environment or the Customer’s access to Data, where the impact of that situation, event, outage, defect or other factor is experienced not only by the Customer but also by other businesses and users, including without limitation a Windows update issue, antivirus update issues or system outage by upstream providers; or
- (i) a Force Majeure Event.

The Supplier may, at its sole discretion, agree to provide assistance with resolving Incidents that have arisen due to an Exception Factor and if and when it does so:

- (a) the work will not be undertaken under this Agreement but under a separate engagement under the Professional Services Terms and Conditions and additional charges will apply; and

the Supplier accepts no responsibility for resolving the issue and the Service Levels in section 8 below do not apply.

**7. Service requests**

- (a) Making Service Requests: The Customer may make service requests in respect of any Incident as follows:

<b>Service request logging procedure</b>	Service requests can be logged via telephone, email, or the client portal.
<b>Telephone request hours</b>	Business Hours 08:00am to 6:00pm - Non-Business Hours 6:00pm to 08:00 am

- (b) Third party involvement

The Customer acknowledges that the Supplier may need to work with third parties for resolution of an Incident and the Customer agrees to the Supplier doing so, subject to the position on additional charges in section 7(c) below.

Customer’s support agreements with other vendors: The Customer is required to maintain current support agreements with all relevant third parties. Where required to resolve an Incident, the Supplier will liaise with the Customer and either work with or hand over the Incident to the relevant third party. On handover, the timing in the Service Levels ceases to apply.

(c) Additional charges

Project Assistance: The Managed Service does not include support services for Requests for Project Assistance. Any Requests for Assistance will be undertaken as a separate engagement under the Professional Services Terms and Conditions and additional charges will apply. The Supplier will provide an estimate for services provided in relation to Requests for Project Assistance for approval by the Customer prior to proceeding. A "Project" is typically defined a new of major change taking more than 1 business day to complete.

Third party vendors or third party products/services: where the Supplier needs to involve the services of a third party vendor or to purchase a third party product or service for resolution of an Incident, an additional charge may apply. The Supplier will provide an estimate of these additional costs for approval by the Customer before incurring the cost, provided that the Customer will not unreasonably withhold approval.

## 8. Service Levels (SLAs)

The response times and target remedy times are within Business Hours only, unless expressly agreed otherwise by the Supplier in writing. Timing ends on escalation to third party support.

If the Customer has After Hours cover:

- the Supplier provides After Hours service for Priority 1 (P1) and Priority 2 (P2) issues only (the response times and target remedy times apply After Hours for P1 and P2 only);
- if the Customer assigns Priority 1 or Priority 2 to an Incident and it is not a P1 or P2, the Supplier may charge for the work required to investigate and diagnose the Incident at its After Hours' rates.
- if a Customer that has After Hours cover requests the Supplier to provide services After Hours for any Incident that is not P1 or P2, and the Supplier agrees to provide the required services, the work will be charged at the Supplier's After Hours' rates.

### Business Hours SLA

Priority	Priority definition	Response time	Target Resolution time
<b>Priority 1 Critical/Urgent</b>	Major issue causing critical impact to operations. Users are prevented from working.	30 mins	1 hour
<b>Priority 2 Serious/High impact</b> <b>business</b>	Issue causing significant impact to business processes.	1 hour	4 hours
<b>Priority 3 Moderate/Routine</b>	Issue affecting a business process.	4 hours	1 Working Days
<b>Priority 4 Low/Minor</b>	Minor issue	8 hours	3 Working Days

### Non-Business Hours SLA

Priority	Priority definition	Response time	Target Resolution time
<b>Priority 1 Critical/Urgent</b>	Major issue causing critical impact to operations. Users are prevented from working.	120 mins	4 hours
<b>Priority 2 Serious/High impact</b> <b>business</b>	Issue causing significant impact to business processes.	4 hours	8 hours

## 9. Service exclusions

Where any of these exclusions apply, the Service Levels do not apply.

- (a) the Exception Factors;

## 10. Service Credits

Service Credits are available for failure by the Supplier to meet the response times in the Service Levels, provided that the failure has not arisen due to an Exception Factor (see section 6 above).

The Supplier will provide the Customer with Service Credits, as set out below, for the failure to meet the following target:

Service Desk SLA Missed	Service Credit as a Percentage of the monthly fees Service Desk
90% or above	N/A
<90% - 70%	5%
Less than 70%	10%

Service credits are not applicable for more than one breach of any targets outlined in this document arising from the same occurrence

## MANAGED SERVICES AGREEMENT TERMS AND CONDITIONS

### 1 **Scope of Agreement**

1.1 The Supplier will provide the Managed Service to the Customer in accordance with this Agreement.

### 2 **Term**

2.1 This Agreement commences on the date that it is signed by both parties.

2.2 This Agreement remains effective for the term specified in part 7 of the Schedule or until terminated by either party under clause 13.

### 3 **Pricing and payment**

3.1 Part 6 of the Schedule specifies the basis of the Supplier's pricing for the Managed Service and the Supplier will invoice the Customer for the Managed Service accordingly. All amounts specified in part 6 are exclusive of any taxes unless expressly specified otherwise.

3.2 Unless otherwise specified, all invoices issued by the Supplier are due for payment by the Customer on the 20th of the month following the date of the invoice.

3.3 Subject to clause 3.4, the Customer will pay all invoices issued by the Supplier to the Customer under this Agreement in full, without setoff, counterclaim or deduction of any kind, on or before the due date.

3.4 If the Customer wishes to dispute an invoice, it must notify the Supplier in writing within 7 days of the date of the invoice and provide details of the dispute. The Customer may withhold payment of the disputed part of an invoice only and must pay that part (or any amount subsequently agreed or determined to be the correct amount owing) promptly on resolution of the dispute.

3.5 Without the Supplier waiving any other right or remedy it may have, if any amount due is not paid by the Customer by the due date, the Supplier may:

- (a) charge the Customer interest calculated at 1.5% per month on the balance of the amount due by the Customer from the due date until payment is received in full by the Supplier; and/or
- (b) charge the Customer all collection costs reasonably incurred by the Supplier in collection of the amount outstanding (including solicitor and/or collection agency fees); and/or
- (c) suspend delivery of the Managed Service until the outstanding amount is paid in full. The Supplier will give five Working Days' notice in writing of its intention to suspend delivery under this clause.

#### **4 Taxes**

4.1 In addition to the amounts due under clause 3, the Customer will pay the Supplier amounts equal to any applicable government taxes or duties however designated, based on this Agreement (or the Managed Service provided under it), paid or payable by the Supplier in respect of the foregoing, exclusive however of taxes based on the Supplier's income.

#### **5 Customer Data**

5.1 Subject to clause 5.2, the Supplier will access the Customer Data only in the course of providing the Managed Service to the Customer under this Agreement.

5.2 The Supplier will only access the Customer Data and disclose the Customer Data to law enforcement or government authorities to the extent required by law. If a request for Customer Data is made by a law enforcement agency or government authority, the Supplier will redirect the request to the Customer or if redirection is not permitted or feasible in the available time frame and unless legally prohibited from doing so, the Supplier will notify the Customer of the request as soon as practically possible.

5.3 Nothing in this Agreement transfers ownership of the Customer Data to the Supplier.

#### **6 Customer's obligations**

6.1 The Customer will:

- (a) make available to the Supplier in a timely manner (and in accordance with any timeframes which the Customer has agreed to) all assistance, including personnel, information, services and equipment reasonably required by the Supplier;
- (b) provide the Supplier with such access to its systems as reasonably required by the Supplier.

#### **7 Provision of Managed Service**

7.1 The Supplier will provide the Managed Service to the Customer:

- (a) with reasonable skill and care; and
- (b) in accordance with:
  - i. this Agreement;
  - ii. currently accepted principles and practices applicable to the provision of the Managed Service;
  - iii. all applicable laws; and
  - iv. the reasonable instructions of the Customer.

7.2 Where the Managed Service includes the supply of any third party service, additional terms and conditions may apply. In each case, the additional terms and conditions will be provided to the Customer (which may be via links in this Agreement) and the Customer is deemed to have accepted these additional terms and conditions on signing this Agreement.



## **8 Personnel**

8.1 The personnel assigned to provide the Managed Service under this Agreement will have the requisite skills and expertise for the purpose and will carry out their duties with due care and skill.

## **9 Personal Data and Data Protection**

9.1 The Customer consents to the Processing of Personal Data by the Supplier for the purposes of this Agreement, in accordance with this Agreement including in particular the GDPR Attachment. Before providing Personal Data to the Supplier, Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable Data Protection Laws.

9.2 To the extent permitted by applicable law and subject to applicable contractual rights and obligations, including the rights and obligations in the GDPR Attachment, Personal Data collected by the Supplier under this Agreement may be transferred, stored and processed in the United Kingdom and/or any other country (or countries) in which the Supplier maintains facilities or any other country in which the Supplier's contractors or service providers (including for example Microsoft and other third party vendors) maintain facilities.

10 In the event of any Personal Data Breach, the Supplier will comply with its obligations, including notification obligations, (if any), under applicable Data Protection Laws.

## **11 Confidential Information**

11.1 Each party agrees to:

- (a) hold in confidence all Confidential Information disclosed to it by the other party including, but without limitation, information which:
  - i. comes into its possession as a result of, or in the performance of, any Managed Service; or
  - ii. is confidential and clearly so identified; or
  - iii. involves business plans or financial and personnel affairs, and
- (b) ensure that all Confidential Information is:
  - i. used only for the purposes of the relevant Managed Service; and
  - ii. protected at all times from unauthorised access or use by, or disclosure to, any third party or misuse, damage or destruction by any person.

## **12 Intellectual property**

12.1 The Supplier or its licensors own the Intellectual Property in the means, methods, processes and know-how that the Supplier uses to provide the Managed Service. Nothing in this Agreement operates to transfer ownership of any Intellectual Property to the Customer.

12.2 Subject to any third party Intellectual Property rights, the Supplier owns any Intellectual Property arising as a result of the Managed Service.

### **13 Warranty by the Supplier**

- 13.1 The Supplier warrants that the Managed Service will be provided with due care and skill by people that have the requisite skills, expertise and competency.
- 13.2 With the exception of the warranty given under clause 12.1, all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

### **14 Termination**

- 14.1 Either party may terminate this Agreement immediately (or with effect from any later date that it may nominate) by written notice to the other party if one or more Insolvency Events occurs in relation to that other party. For the purposes of this clause, 'Insolvency Event' means, in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):
- (a) a receiver, manager or liquidator is appointed over the party's undertaking or assets or the party enters into any assignment, composition or arrangement with its creditors; or
  - (b) the party is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or suspends payment to its creditors.
- 14.2 Without limiting any other rights of termination that a party may have, either party may terminate this Agreement on written notice to the other party if the other party:
- (a) commits a material breach of any of its obligations under this Agreement; and
  - (b) fails to remedy that breach within 30 days of prior written notice of such breach.

### **15 Consequences of termination**

- 15.1 Subject to clause 14.2, on termination of this Agreement by either party, if there is a fixed term the Customer will pay for the remainder of the Initial Term or Renewal Term (as applicable) of the Managed Service. The Supplier will issue invoices to the Customer for all amounts specified in this clause 14.1 for which no invoice has yet been issued and all invoices will be due on the 20<sup>th</sup> of the month following the date of invoice. Invoices issued prior to the date of termination will remain due in accordance with the terms of the invoice.
- 15.2 On termination of this Agreement by the Customer under clause 13.2, the Customer will pay the Supplier for the Managed Service provided up until the date of termination.

## 16 Liability and indemnity

- 16.1 The Supplier's liability under this Agreement is limited to direct loss only, to the amount paid by the Customer in the twelve months period preceding the event giving rise to the claim.
- 16.2 In no event is the Supplier liable for any indirect loss or for any loss of profits, lost savings, lost revenue, loss of data, business interruption, incidental or special damages, or for any consequential loss. In addition, the Supplier is not liable for any damages claimed by the Customer based on any third party claim, including, but not limited to, any claim in negligence. In no event is the Supplier liable for any damages caused (whether directly or indirectly) by the Customer's failure to perform its responsibilities under this Agreement.
- 16.3 The Customer indemnifies the Supplier against any costs (including legal costs on a solicitor and own client basis, all and any court costs and witness fees and related legal expenses), expenses, claims, demands or liability whether direct, indirect or otherwise, and whether arising in contract, tort (including negligence), equity or otherwise, arising out of, and must at the Supplier's request, and subject to clause 16.4 and any reasonable conditions imposed at the Supplier's discretion, at the Customer's own cost defend or settle, any claim, action or proceedings brought against the Supplier in connection with:
- (a) any software, services, documents or materials issued, provided or made available by the Customer to the Supplier for use or access by the Supplier in the performance by the Supplier of this Agreement where that use or access infringes or is alleged to infringe the intellectual property rights of any third party; or
  - (b) A breach by the customer of this Agreement.
- 16.4 If the Supplier wishes to rely on an indemnity under clause 16.3, the Supplier:
- (a) must ensure that the Customer is notified promptly in writing of the relevant claim, action or proceedings ("Claim") once it becomes aware of the Claim;
  - (b) will make no admission of liability regarding the Claim nor any offers of settlement regarding the Claim without the Customer's written approval;
  - (c) may, at its discretion, grant control of the defence or settlement to the Customer;
  - (d) will, where the Supplier has granted control of the defence or settlement negotiations to the Customer:
    - i. co-operate reasonably with the Customer in defending or settling the Claim and make its employees available to give statements, advice and evidence, as the Customer may reasonably request, all at the expense of the Customer; and
    - ii. give the Customer sufficient authority and relevant information in its possession or control in order to assist the Customer to conduct the defence of the Claim and all negotiations for its settlement or compromise.

## 17 **Dispute Resolution**

- 17.1 In the event of any dispute arising between the parties in relation to this Agreement, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 16.
- 17.2 The party initiating the dispute (“the first party”) must provide written notice of the dispute to the other party (“the other party”) and nominate in that notice the first party’s representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations (“Other Party's Notice”). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.
- 17.3 If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period as may be agreed upon in writing by the parties), either party may utilise any other legal remedies available to it in seeking to resolve the dispute.

## 18 **Non-Solicitation**

- 18.1 Neither party will, without the written consent of the other party, solicit, employ, or otherwise engage the services of, the other party’s personnel (including employees and contractors). This clause will apply during the term of this Agreement and for six months after termination of the Agreement.
- 18.2 A party may as a condition of granting its consent under clause 17.1 above, require the other party to pay to it a fee of 20% of the person’s gross annual remuneration to cover the cost of replacing the employee or contractor.

## 19 **Notices**

- 19.1 Any notice or other communication in connection with this Agreement must be:
- (a) marked for the attention of the person specified in Parts 1 and 2 of the Schedule or any replacement person notified in writing by the relevant party; and
  - (b) left at the address or sent by prepaid post or email to the address of the relevant party specified in Parts 1 and 2 of the Schedule or any replacement address notified by that party.
- 19.2 Notices or other communications are deemed received:
- (a) if delivered by hand, on delivery;
  - (b) if delivered by post:
    - i. on the third Working Day following posting if sent and received locally (not internationally); and
    - ii. on the tenth day following posting if posted internationally;

- (c) if sent by email, on sending the email provided that no email is successfully sent if the sender receives any type of delivery notification failure and provided further that the onus is on the sender to ensure that the email has been successfully received by the recipient.

## **20 Force majeure**

- 20.1 Either party may suspend its obligations to perform under this Agreement if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.
- 20.2 Where a party's obligations have been suspended pursuant to clause 19.1 for a period of 30 days or more, the other party may immediately terminate this Agreement by giving notice in writing to the other party.

## **21 General**

- 21.1 **Assignment.** Neither the Customer nor the Supplier may assign its rights under this Agreement without the prior written consent of the other party.
- 21.2 **Contractors.** The Supplier may perform its obligations under this Agreement by the use of the Supplier-selected independent contractors.
- 21.3 **Other agreements.** Subject to clause 10, nothing in this Agreement prevents the Supplier from entering into similar agreements with others or from providing managed services which are the same or similar to the Managed Service provided under this Agreement.
- 21.4 **Survival.** All clauses of this Agreement, which by their nature survive the termination of this Agreement will do so.
- 21.5 **Entire agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.
- 21.6 **Further assurances.** The parties must each do all such further acts (and sign any documents), as may be necessary or desirable for effecting the transactions contemplated by this Agreement.
- 21.7 **Amendments.** Except as specifically provided, no amendment to this Agreement will be effective unless it is in writing and signed by both parties.
- 21.8 **Waiver.** No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it. A waiver on one occasion shall not be construed as a waiver of any right on any future occasion.
- 21.9 **Partial invalidity.** If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law. To the extent any provision cannot be enforced in accordance with the stated

intentions of the parties, such terms and conditions shall be deemed not to be a part of this Agreement.

## 22 **Governing Law**

22.1 This Agreement is governed by the law of England and Wales. The parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.

## 23 **Interpretation and definitions**

23.1 In this Agreement, the following terms will, unless the context requires otherwise, have the following meanings:

**“After Hours”** (where applicable) means outside of Business Hours;

**“Agreement”** means this Managed Services Agreement, the Schedule, the Appendix, these terms and conditions and the GDPR Attachment;

**“Appendix”** means the appendix to the Schedule;

**“Business Hours”** means 8.00am-6.00pm on Working Days;

**“Confidential Information”** means any information disclosed in confidence to one party by the other party, whether of a business, financial, technical or non-technical nature or otherwise and whether existing in hard copy form, electronically or otherwise but does not include any information which is:

- (a) on receipt by the recipient party, in the public domain or which subsequently enters the public domain without any breach of this Agreement;
- (b) on receipt by the recipient party, already known by that party (otherwise than as a result of disclosure by the other party);
- (c) at any time after the date of receipt by the recipient party, received in good faith by the recipient party from a third party;
- (d) required by law to be disclosed by the recipient party;

**“Data Protection Laws”** means the GDPR as incorporated into UK law by the UK Data Protection Act 2018, and the UK Data Protection Act 2018 itself, and includes any statutory modification or re-enactment of such laws for the time being in force;

**“Exception Factors”** means the factors described in section 6 of the Appendix;

**“Force Majeure Event”** means any war, riot, pandemic, civil emergency, third party strike, natural disaster or other circumstance of a similar nature that is outside of the control of the affected party;

**“GDPR”** means the EU General Data Protection Regulation 2016/679;

**“Incident”** means an issue in respect of the Managed IT Environment or an issue that the Customer is experiencing in accessing or using the Managed IT Environment;

**“Intellectual Property”** means copyright, patents, designs, trademarks, trade names, goodwill rights, rights in designs, moral rights, database rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property, in all cases whether or not registered or able to be registered in any country, and including the right to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world from time to time;

**“Managed IT Environment”** means the customer’s IT environment or specified part of it that is managed by the Supplier under the Managed Service, as specified in section 1 of the Appendix, subject to any changes agreed under change control in section 2 of the Appendix;

**“Managed Service”** means the managed service to be provided to the Customer, as described in the Appendix;

**“Personal Data”** means any information relating to an identified or identifiable natural person, or any equivalent definition in relevant Data Protection Laws in force at the relevant time;

**“Personal Data Breach”** means unauthorised access to, unauthorised disclosure of, or loss of, Personal Data (being Personal Data that is Processed by the Supplier under this Agreement), or any equivalent definition in relevant Data Protection Laws;

**“Processing”** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction, and ‘Process’ and ‘Processed’ has/have a corresponding meaning, or any equivalent definition in relevant Data Protection Laws;

**“Request for Assistance”** means a request for assistance made by the Customer that is not in connection with an Incident;

**“Schedule”** means the schedule that begins after the execution provisions of this Agreement;

**“Working Day”** means a day other than a Saturday, Sunday or public holiday in the UK

## 23.2 Interpretation

- (a) In this Agreement, reference to the plural includes reference to the singular, and vice versa.
- (b) Headings inserted in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

## GDPR ATTACHMENT

Under this Agreement, the Customer engages the Supplier to provide the Services and in providing the Services, the Supplier will or may be required to Process Personal Data on behalf of the Customer. To the extent of that Processing of Personal Data and for the purposes of this Agreement, the Customer is a 'Controller' and the Supplier is a 'Processor' for the purposes of the GDPR. As such, Article 28 of the GDPR requires that the details in this attachment are included in the contract between the Customer and the Supplier.

The parties must set out the subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of data subjects – see appendix 1 to this attachment. If the Supplier determines the purposes and means of Processing, the Supplier is considered a 'Controller' in respect of that Processing in which case the Supplier needs to consider and address the different and additional provisions of the GDPR that apply.

The terms used in this attachment have the meanings given to them in the main definition section of this Agreement or in clause 13 of this attachment, or in the GDPR if not defined in this Agreement.

### **1 Processing of Personal Data**

1.1 The Supplier will:

- (a) Instructions from Customer: in providing Services under this Agreement, Process Personal Data only on the Customer's documented instructions (as provided in clause 2 and in appendix 1 to this attachment or otherwise in writing) unless required to do so by the Data Protection Laws in which case the Supplier will inform the Customer of that legal requirement before Processing unless the Supplier is prohibited from informing the Customer by that law;
- (b) Confidentiality: ensure that the Supplier's personnel who are authorised to Process the Personal Data have obligations of confidentiality to the Supplier (including as required in clause 3 below) in respect of the Personal Data or are under an appropriate statutory obligation of confidentiality;
- (c) Security: comply with the security obligations in clause 4 below;
- (d) Subprocessors: comply with the provisions relating to Subprocessors in clause 5 below;
- (e) Data subjects' rights: provide assistance to the Customer with responding to data subjects' rights in accordance with clause 6 below;
- (f) Assist Customer: comply with its obligations to assist the Customer in relation to security of Personal Data and data protection impact assessments and prior consultation in accordance with clause 7 below;
- (g) Deleting and retuning data: after the provision of Services related to Processing of Personal Data has ended, at the choice of the Customer either delete or return to the Customer all of that Personal Data and delete existing copies unless the Data Protection Laws require storage of Personal Data in accordance with clause 8 below; and
- (h) Compliance and audits: make available to the Customer all information necessary to demonstrate compliance with Article 28 of the GDPR and allow for and contribute to audits including inspections conducted by the Customer or another auditor mandated from time to time, in accordance with clause 9 below. The Supplier will immediately inform the Customer if, in its opinion, an instruction received from the Customer under this clause 1.1(h), infringes the Data Protection Laws.

### **2 Instructions from Customer**

2.1 The Customer instructs the Supplier (and authorises the Supplier to instruct each Subprocessor) to:

- (a) Process Personal Data; and



(b) in particular, transfer Personal Data to any country or territory,

as reasonably necessary for the provision of the Services and consistent with and in compliance with this Agreement.

2.2 The Customer warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in clause 2.1 on behalf of the Customer.

### 3 Confidentiality

3.1 The Supplier will take reasonable steps to ensure the reliability of its employees, agents or contractors who may have access to Personal Data, ensuring in each case that access is limited to those individuals who need to know or need to access the relevant Personal Data, as necessary for the purposes of this Agreement, and to comply with applicable laws in the context of that individual's duties to the Supplier, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

### 4 Security

4.1 Subject to clause 4.2 below, the Supplier will implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including amongst other things as appropriate:

- (a) the pseudonymisation and encryption of Personal Data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.

4.2 In assessing the appropriate level of security for clause 4.1 above, the Supplier will take account in particular of the risks of a Personal Data Breach that are presented by the Processing to be undertaken under this Agreement.

4.3 The Supplier will in relation to Personal Data:

- (a) implement and maintain appropriate information security to protect Personal Data against:
  - i. a Personal Data Breach;
  - ii. all other unauthorised or unlawful forms of Processing; and
  - iii. any breach of the Supplier's information security obligations in this attachment. The Supplier will (and will ensure that its Sub-processors) provide full cooperation and assistance to the Customer in ensuring that the individuals' rights under the Data Protection Laws are timely and appropriately addressed for the fulfilment of the Customer's obligation to respond without undue delay to requests by such individuals as required by Data Privacy Laws, including the rights of subject access, rectification, erasure, and portability, and the right to restrict or object to certain Processing;
- (b) take reasonable steps to inform its staff, and any other person acting under its supervision, of the responsibilities of any Data Privacy Laws due to the incidental access to Personal Data, and ensure the reliability of its staff and any other person acting under its supervision who may come into contact with, or otherwise have access to and Process, such Personal Data.

### 5 Subprocessors

5.1 The Customer authorises the Supplier to appoint Subprocessors (and permits each Subprocessor appointed in accordance with this clause 5 to appoint Subprocessors) in accordance with this clause 5 and any restrictions in this Agreement.

5.2 The Supplier will give the Customer prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within two weeks of receipt of that notice, the Customer notifies the Supplier in writing of any objections (on reasonable grounds) to the proposed appointment, the Supplier will not appoint (nor disclose any Personal Data to) the proposed Subprocessor unless and until it obtains the prior written consent of the Customer.

5.3 With respect to each Subprocessor, the Supplier will:

- (a) enter into an agreement with the Subprocessor which includes the same data protection obligations as set out in this attachment (and Appendix 1) and in particular includes sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR. If the Subprocessor fails to fulfil its data protection obligations, the Supplier will remain fully liable to the Customer for the performance of that Subprocessor's obligations;
- (b) if the Processing by the Subprocessor will involve a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between the Supplier and the Subprocessor; and
- (c) provide to the Customer for review, copies of the Supplier's agreements with Subprocessors (confidential commercial information that is not relevant to the requirements of this attachment may be blacked out) as the Customer may request from time to time.

5.4 Appendix 1 to this attachment sets out certain information regarding the Supplier's Processing of Personal Data, as required by article 28(3) of the GDPR. The Customer may make reasonable amendments to Appendix 1 by written notice to the Supplier from time to time as the Customer reasonably considers necessary to meet those requirements.

## 6 Data Subjects' Rights

6.1 Taking into account the nature of the Processing, the Supplier will, by implementing appropriate technical and organisational measures to the extent described in clause 4, assist the Customer to respond to requests to exercise Data Subject rights under the Data Protection Laws.

6.2 The Supplier will:

- (a) promptly notify the Customer if the Supplier or any Subprocessor receives a request from a Data Subject under any Data Protection Law in respect of Personal Data; and
- (b) ensure that the Supplier or relevant Subprocessor does not respond to that request except on the documented instructions of the Customer or as required by Applicable Laws to which they are subject, in which case the Supplier will to the extent permitted by Applicable Laws inform the Customer of that legal requirement before the Supplier or relevant Subprocessor responds to the request.

## 7 Assist Customer

7.1 Assist Customer with Security of Processing:

- (a) The Supplier will assist the Customer in respect of the Customer's obligations to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, by complying with the Supplier's obligations under clause 4 of this attachment.

7.2 Assist Customer with notifications of Personal Data Breach

- (a) The Supplier will notify the Customer without undue delay if the Supplier or any Subprocessor becomes aware of a Personal Data Breach, providing the Customer with sufficient information to allow the Customer to meet any obligations to report the Personal Data Breach to the relevant Supervisory Authority under the Data Protection Laws (noting that the Customer is required, where feasible, to notify applicable Personal Data breaches to the relevant Supervisory Authority within 72 hours after having become aware of the breach).

- (b) The Supplier will co-operate with the Customer and take such reasonable commercial steps as are directed by the Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

### 7.3 Assist Customer with communication of Personal Data breach to Data Subject

- (a) Where a Personal Data Breach is likely to result in a high risk to the rights and freedoms of natural persons:
  - i. such that the Customer is required to communicate the Personal Data Breach to the Data Subject (including where, despite the conditions referenced in clause 7.3(a)(ii) below being met, the Supervisory Authority has required the Customer to communicate the Personal Data Breach to the Data Subject), the Supplier will assist the Customer in doing so by providing all relevant information as may be reasonably required by the Customer;
  - ii. but despite that high risk, the Customer is not required to communicate the Personal Data Breach to the Data Subject due to certain conditions being met (such as that the Personal Data is encrypted and so unintelligible to any person not authorised to access it), the Supplier will assist the Customer by providing all relevant information as may be reasonably required by the Customer.

### 7.4 Assist Customer with Data Protection Impact Assessments

- (a) The Supplier will provide reasonable assistance to the Customer with any data protection impact assessments which the Customer reasonably considers to be required of the Customer by Article 35 of the GDPR or equivalent provisions of related Data Protection Laws. The Supplier's obligations under this clause 7.4(a) are solely in relation to Processing of Personal Data by the Supplier and taking into account the nature of the Processing and information available to the Supplier.

### 7.5 Assist Customer with Prior Consultation with Supervisory Authority

- (a) The Supplier will provide reasonable assistance to the Customer with prior consultations with Supervising Authorities or other competent data privacy authorities, which the Customer reasonably considers to be required of the Customer by Article 36 of the GDPR or equivalent provisions of related Data Protection Laws. The Supplier's obligations under this clause 7.5(a) are solely in relation to Processing of Personal Data by the Supplier and taking into account the nature of the Processing and information available to the Supplier.

## 8 Deletion or return of Personal Data

8.1 Subject to clauses 8.2 and 8.3, the Supplier will, within two weeks of the date of expiration or termination of Services involving the Processing of Personal Data (the "End of Processing Date"), delete and procure the deletion of all copies of the Personal Data.

8.2 Subject to clause 8.3, the Customer may in its absolute discretion by written notice to the Supplier within two weeks of the End of Processing Date require the Supplier to:

- (a) return a complete copy of all Personal Data to the Customer by secure file transfer in such format as is reasonably notified by the Customer to the Supplier; and
- (b) delete and procure the deletion of all other copies of Personal Data Processed by the Supplier. The Supplier will comply with any such written request within two weeks of the End of Processing Date.

8.3 The Supplier may retain Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that the Supplier will:

- (a) ensure the confidentiality of all such Personal Data;
- (b) ensure that such Personal Data is only processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.

8.4 The Supplier will provide written certification to the Customer that it has fully complied with this clause 8 within [two weeks] following the End of Processing Date.

## 9 Audit rights

9.1 Subject to clauses 9.2 to 9.4, the Supplier will make available to the Customer on request all information necessary to demonstrate compliance with this attachment, and will allow for and contribute to audits, including inspections, by the Customer or an auditor mandated by the Customer in relation to the Processing of Personal Data by the Supplier.

9.2 Information and audit rights of the Customer only arise under clause 9.1 to the extent that this Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Laws (including, where applicable, article 28(3)(h) of the GDPR).

9.3 The Supplier may, on reasonable grounds, object to the proposed auditor in which case the Customer will propose an alternate auditor.

(a) The Customer will give the Supplier reasonable notice of any audit or inspection to be conducted under clause 9.1 and will make (and ensure that its auditor makes) reasonable endeavours to avoid causing any damage, injury or disruption to the Supplier's premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. The Supplier need not give access to its premises for the purposes of such an audit or inspection for the purposes of more than one audit or inspection in any calendar year, except for any additional audits or inspections which:

- i. the Customer reasonably considers necessary because of genuine concerns as to the Supplier's compliance with this attachment; or
- ii. the Customer is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory,

where the Customer has identified its concerns or the relevant requirement or request in its notice to the Supplier of the audit or inspection.

## 10 Restricted Transfers

10.1 The Customer acknowledges that in providing Personal Information to the Supplier under this Agreement, there is no Restricted Transfer given that the Supplier is in the United Kingdom.

## 11 Order of precedence

11.1 Nothing in this attachment reduces the Supplier's obligations under this Agreement in relation to the protection of Personal Data or permits the Supplier to Process (or permit the Processing of) Personal Data in a manner which is prohibited by this Agreement. In the event of any conflict or inconsistency between this attachment and the Standard Contractual Clauses, the Standard Contractual Clauses will prevail.

11.2 Subject to clause 11.1, in the event of inconsistencies between the provisions of this attachment and the other parts of this Agreement, the provisions of this attachment will prevail.

## 12 Changes in Data Protection Laws

12.1 The Customer may by at least 30 calendar days' written notice to the Supplier:

(a) vary the Standard Contractual Clauses (if applicable), as they apply to Restricted Transfers which are subject to non-UK data protection laws, as required as a result of any change in, or decision of a competent authority under, that data protection law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that data protection law; and

- (b) propose any other variations to this attachment which the Customer reasonably considers to be necessary to address the requirements of any data protection law.

12.2 If the Customer gives notice under clause 12.1(a):

- (a) the Supplier will promptly co-operate (and require affected Subprocessors to promptly co-operate) to ensure that equivalent variations are made to the agreements made under clause 5.3; and
- (b) the Customer will not unreasonably withhold or delay agreement to any consequential variations to this attachment proposed by the Supplier to protect the Supplier against additional risks associated with the variations made under this clause 12.2.

12.3 If the Customer gives notice under clause 12.1(b), the parties will promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in the Customer's notice as soon as is reasonably practicable.

### 13 Definitions

In this attachment:

"Contracted Processor" means the Supplier or a Subprocessor;

"Data Subject" means an identified or identifiable natural person, or any updated definition of this term from time to time in the GDPR;

"EEA" means the European Economic Area;

"Information Security Obligations" means commercially reasonable and appropriate physical, technical and organisational security measures (determined with regard to risks associated with the Processing of Personal Data as part of the Services), including the measures set out in this Agreement and in particular in the Standard Contractual Clauses (where applicable).

"Restricted Transfer" means transferring Personal Data outside of the United Kingdom, whether this is:

- (a) a transfer of Personal Data from the Customer to the Supplier or to a Subprocessor; or
- (b) an onward transfer of Personal Data from one Contracted Processor to another Contracted Processor, or between two establishments of a Contracted Processor,

in each case, where such transfer means would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws), in the absence of the Standard Contractual Clauses;

"Services" means, for the purposes of this GDPR Attachment, the Managed Services and any related services supplied to or carried out by or on behalf of the Supplier for the Customer under this Agreement;

"Subprocessor" means any person (including any third party, but excluding an employee of the Supplier or any of its sub-contractors) appointed by or on behalf of the Supplier to Process Personal Data on behalf of the Customer in connection with this Agreement;

"Standard Contractual Clauses" means the standard contractual clauses issued by the European Commission (EU controller to non-EU or EEA processor), varied as permitted for the UK context, which, if applicable, are in Appendix 2 to this attachment (and if not applicable, there is no Appendix 2);

The term "Supervisory Authority" has the meaning given to that term in the GDPR.