



## General Terms & Conditions

July 2019

## TERMS OF BUSINESS: IT SERVICES

These are Aztech's General Terms and Conditions of business and should be read in conjunction with the Order Form agreed between Aztech and the Customer and the applicable Schedule Document for the service required.

### 1 DEFINITIONS AND INTERPRETATION

1. The following words and expressions shall have the definitions below:

"Aztech" or "us" or "our" or "we" means Aztech IT Solutions Ltd, a company registered in England & Wales with company number 05682574 and whose registered office is located at Libra House, Sunrise Parkway, Linford Wood Business Park, Milton Keynes, MK14 6PH

"Business Day" and "Business Hours" means from 08:30am to 5:30pm any day other than Saturday or Sunday or a bank or public holiday in England

"Service Desk Hours of Operation" means from 07:00am to 7:00pm any day other than Saturday or Sunday or a bank or public holiday in England.

"After Hours" means from 5:30pm to 8:30am Monday to Friday and all-day Saturday and Sunday including bank or public holidays.

"Confidential Information" means technical and commercial know-how, specifications, inventions, processes, initiatives and software code which is or are of a confidential nature together with any other confidential information concerning a party's business, finances, customers, products and services and any other information specified by either party as being confidential in nature

"Contract" has the meaning given in clause 2.1

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company

"controller", "processor", "data subject", "personal data", "personal data breach", "processing" and "appropriate technical and organisational measures" have the meanings given to them in the Data Protection Legislation

"Customer" means the person, firm or company receiving the Managed Services as identified in the Service Order Form and a reference to "you" or "your" shall be construed accordingly

"Customer Data" means all data, information and other materials in any form relating to you (or your customers) and which may be accessed, generated, collected, stored or transmitted by us (or any contractor on our behalf) in the course of the performance of the Managed Services

"Customer Materials" means any software, Customer Data, calculations, algorithms, methods, information and other materials created or supplied by you and made available to us for use in the Managed Services

"Data Protection Legislation" means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)

"Deliverables" means the deliverables and/or output of the Managed Services (if any) as described in the Service Order Form

"Effective Date" has the meaning given to it in clause 2.2

"Force Majeure Event" has the meaning given in clause 20.1

"Good Industry Practice" means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or a recognised company engaged in the same type of activity under the same or similar circumstances

"Initial Term" means the initial term of the Contract as specified in the Service Order Form or, if no such period is referred to in the Service Order Form, the relevant period of time set out in the Schedule that relates to that Managed Service, in either case, commencing from the Service Start Date

"Intellectual Property Rights" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, 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

"Managed Services" means the services and any associated Deliverables specified in the Service Order Form that are to be supplied by Aztech to you, and (where applicable) as further set out in the relevant Schedule

"Services" means the service provided by Aztech has identified in the Order Form.

"Third Party Services" means any part of the Services which Aztech procures from a third party, and any third party hosting services, support, telecommunications services and/or equipment which Aztech uses in order to provide the Services

"Third Party Services Provider" means the provider of any Third-Party Services

"Pre-existing Materials" means all documents, software, databases, information and materials provided by us relating to the Managed Services which existed prior to the Effective

Date, including source code or object code, data, reports and specifications and any pre-existing materials specified in the Service Order Form

**“Service Order Form”** means our document which sets out the commercial terms on which the Managed Services will be provided to you or which sets out the scope of works where we are providing professional services

**“Renewal Term”** has the meaning given in clause 4.1

**“Schedule Document”** means any schedule document applicable to the particular Services and Products, as identified in the Order Form

**“Service Levels”** means any service levels applicable to the Services as set out in the Schedule Document

**“Service Start Date”** means the first day on which the Managed Services are provided to you

**“System”** means your information technology system including hardware, software, operating systems and interfaces (if any)

**“Term”** has the meaning given to it in clause 4.1 unless a specific Schedule applies to the services in which case it shall have the meaning given to it in that Schedule (and the definition in the Schedule shall prevail over the definition in these Terms of Business)

**“Terms of Business”** means the terms and conditions set out in this document

**“UK Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended

**“VAT”** means Value Added Tax chargeable under English law for the time being and any similar additional tax

**“Your Equipment”** means any equipment, systems, cabling or facilities provided by you and used directly or indirectly in the supply of the Managed Services

2. The following rules of interpretation shall apply:

1.A **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors and permitted assigns.

2. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.

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

4.Any words following the terms “including”, “include”, “in particular” 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.

5.Any reference to “parties” is a reference to the parties and a “party” shall mean either party as the context permits.

## 2 CONTRACT TERMS

1.Each request for Managed Services constitutes an offer by you to purchase and receive the Managed Services. If we choose to accept your offer then we shall send the Service Order Form to you. A binding contract shall be formed between you and us for the purchase and supply of the Managed Services incorporating the terms prescribed in clause 2.2 to the exclusion of all other terms (“Contract”). The Contract takes effect on the date we countersign the applicable Service Order Form (“Effective Date”).

2.Each countersigned Service Order Form will create a separate Contract between you and us with regard to its subject matter and will incorporate the terms in the following documents:

1. the Service Order Form;

2.the relevant Schedule for those Managed Services as specified in the Service Order Form; and

3. these Terms of Business.

3.If there is a conflict or inconsistency between some or all of the documents which make up the Contract, the order of priority for interpretation shall be as set out in clause 2.2.

4.Any terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, shall be excluded from the Contract.

5.Marketing and other promotional material relating to the Managed Services issued by us are illustrative only and do not form part of the Contract.

6. You shall be responsible for ensuring the accuracy of the Service Order Form and for giving all relevant information concerning the Managed Services to us. Any error or omission in our marketing and promotional literature, Service Order Form or other document issued by us shall be subject to correction without liability on our part.

7.We may issue quotations and proposals to you from time to time. Quotations are invitations to treat only and they are not an offer to supply Managed Services and are incapable of being accepted by you.

## 3 GOODS, SERVICES AND MANAGED SERVICES

1.The Managed Services will be provided to you throughout the Term, in accordance with the Service Order Form and subject to these Terms of Business and any Schedule to which the Managed Services relate.

- 3.2 We have no liability for any delay in or failure of performance of the Managed Services caused by your failure to comply with your obligations and duties set out in the Contract or where you have failed to meet reasonable deadlines for assistance which we have given to you.
- 3.3 Term and effect: Quotes will only be valid for 7 days unless otherwise specified in the Quote. A Quote is merely an invitation to You to place an Order with Us and the acceptance of a Quote by You will not create a binding contract between You and Us
- 3.4 Once a quote has been confirmed by Us, then the prices in the quote will be confirmed as the final agreed price. A quote is confirmed as 'final' as soon as both parties agree with the final price after any last changes requested by You.
- 3.5 Quotes and estimates shall be deemed to correctly interpret the original specifications and are based on the cost at the time the quote or estimate is given. If You later require any changes to the quotes, and We agree to the changes, these changes will be charged at Our prevailing rate.
- 3.6 Once the Quote has been confirmed and converted to an Order, the Order will be subjected to our normal Terms and Condition of Sale.
- 3.7 The general minimum turnaround time for Quote request to be actioned is usually 24 hours. In the event that a quote is required urgently please let us know so that we can respond to it accordingly.
- 3.8 In the event that products in the Quote are subjected to any price and supply fluctuations that is outside of Our control We reserve the right to update the price and product in the Quote accordingly. If a product has undergone a price drop or a price increase, the Quote will then be adjusted accordingly. If there is a product that is no longer available, the product will then be replaced or substituted based on Your request and is subject to Your final approval.
- 3.9 Price on non-stocked products are subjected to Price and stock fluctuations and can only be confirmed once the Quote is turned into an Order. While We endeavour to honour every price quoted, if there is a price increase that is beyond our control, We reserve the right to increase the price as necessary.
- 10. ETA information is based on an estimate given by our vendors and cannot be held as the actual promised date.
- 11. Freight charges will be added to the Order unless otherwise stated. Any included delivery charges are estimates only.
- 12. We do not keep inventory and as such only order items once we receive a completed order from a client. If You would like to return an item or cancel

an order, a restocking fee may apply. We will need to get approval from the distributor that the stock is returnable before being able to issue a refund as not all products can be returned.

- 3.13 Unless Specified, all items on quote are covered by manufacturer's warranty covering parts and labour for hardware only on a return to depot basis.

#### 4 **TERM**

1. Unless specified otherwise in the applicable Schedule or Service Order Form, the Services shall commence on the Service Start Date. Unless the Contract has terminated in accordance with clauses 16 or 20, the Contract shall continue for the Initial Term and, thereafter, the Contract shall automatically continue for successive periods as the original Committed Term (each a "Renewal Term"), unless:

1. you notify us of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Term, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Term; or

2. otherwise terminated in accordance with the provisions of the Contract and, in respect of the Managed Services, the Initial Term together with any subsequent Renewal Term shall constitute the "Term".

4.2 It is a primary obligation of this Contract that you continue to pay for the Services for the entire Term of the Contract. If you request to terminate the Contract before the end of the Term (and provided you are not terminating in accordance with clause 16.1 or clause 20), we may require you to pay the outstanding balance of our charges which would have been payable but for early termination, prior to us permitting early termination. Where we have also incurred costs, fees or expenses to third parties to facilitate the Managed Services, you shall also have to pay any such costs, fees or expenses which we will notify to you. You agree that payment as required by this clause 4.2 is a reasonable pre-estimate of our losses costs and expenses arising from early termination.

## 5 WARRANTIES

1. Reliance on Manufacturer's Warranty: You will rely on the warranties provided by the manufacturer of Goods supplied by Us (where applicable) and will deal direct with such manufacturer rather than Us for all claims covered by such warranties.

2. No claim for manufacturer's default: You indemnify and hold Us harmless in respect of the performance or otherwise, by any manufacturer of Goods supplied to You by Us, of any of the obligations of such manufacturer in respect of such Goods. This includes any damages or moneys due to You arising under, or in connection with, any breach by the manufacturer of any the manufacturer's warranties in respect of the Goods.

5.3 We warrant to you that:

1. the Managed Services shall be provided using reasonable care and skill;

2. we shall provide the Services to you in accordance with the Service Order Form in all material respects;

3. the Managed Services will be performed in accordance with Good Industry Practice; and

4. We shall not be liable for a failure to comply with the warranties in clause 5.0 if:

1. the defect arises because you or your employees, agents or subcontractors failed to follow the instructions regarding storage, installation, commissioning, use or maintenance of the Deliverables;

2. you alter or repair such Deliverables without our prior written consent; or

3. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

5. We do not warrant that the Managed Services relating to third parties will be fault free or free of interruptions or errors.

6. You acknowledge and accept that access to the internet, mobile phone networks and other communication media that may be required for the provision of the Managed Services are inherently associated with risk. We accept no liability for delays, delivery failures, loss of data or inability to provide the Managed Services in part or at all arising from such. We shall not be liable for any delay or failure to provide the Managed Services arising from a technical or other failure to the underlying electronic communication network or information technology system required for the provision of communications services (whether your systems or a third parties.)

5.7 We do not warrant or guarantee the performance of the internet, mobile phone networks and other communication media required for the provision of the Managed Services or that the transmission of data will be secure or error or virus free or that the internet, mobile phone networks and other communication media will be accessible at all times.

## 6 YOUR OBLIGATIONS

6.1 You shall:

1. provide all reasonable assistance and cooperation to us in relation to the provision of the Services and comply with any reasonable instruction from us which relates to your use of the Services;

2. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Managed Services are to start;

3. ensure that your System meets the minimum technical specifications for compatibility with the Managed Services as notified by us from time to time;

4. provide all necessary physical and remote access to us which may be required for the provision of the Managed Services, including in relation to your Equipment, your System and your premises (as appropriate), and keep us updated as to any related security access information;

5. comply with all applicable laws and regulations with respect to your activities under the Contract;

6. perform any of the obligations and observe any restrictions imposed on you in any applicable Schedule.

2. You shall not:

1. use the Managed Services for any unlawful purposes or for any purposes that would be perceived to be unlawful;

2. do anything which does or could cause a degradation of service to any of our other customers;

3. access, store, distribute or transmit any data or materials if their transmission using the Managed Service would constitute a breach of the Contract, or would be unlawful, threatening, defamatory, obscene or offensive, or depicts sexually explicit content, or promotes violence, or is discriminatory;

4. use or access the Managed Services to build a competing product or service; or

5. commercially exploit the Managed Services in any manner which not specifically envisaged by the Contract, including selling, renting, leasing, transferring, assigning, distributing, displaying, disclosing, or otherwise making the Managed Services available to any third party.

6.3 We reserve the right to suspend or disable (in our absolute discretion) your access to any material that

breaches the provisions of this clause, without liability or prejudice to our other rights to you.

6.4 Where you are or become aware of any matters which you know, or ought reasonably to be expected to know, constitute a threat to the security of the Managed Services, you will promptly notify us of such matters in writing.

## **7 YOUR WARRANTIES**

1. You warrant and represents to us that:

1. you have the right, power and authority to enter into the Contract and to grant us the rights described in it and to receive the Services;

2. any Customer Materials do not and shall not infringe the Intellectual Property Rights of any third party; and

3. you have in place appropriate virus protection and information security measures.

## **8 CHARGES & PAYMENT**

1. The charges for the Managed Services shall be as set out in Service Order Form. Where such charges are on a time and materials basis the charges shall be calculated in accordance with the standard daily or hourly rates (as appropriate) stated in the Service Order Form, or if not stated, our prevailing rates from time to time.

2. We shall raise invoices for the Managed Services monthly in advance unless we have agreed an alternative payment structure or payment terms in the Service Order Form or relevant Schedules.

3. You must pay all approved invoices in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) within 30 days of the date of each invoice to the bank account nominated by us, such payments to be made by direct debit or standing order. We will allow 14 days after the invoice has been sent to raise any disputes.

4. Time of payment is of the essence. If we have not received your payment of our charges by the due date:

1. we may suspend the supply of Services in this Contract (and any other contracts that we have with you) until all outstanding invoices are paid; and

2. charge interest which shall accrue on such unpaid invoice from the date it became overdue, until payment, at the current rate payable under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).

5. Change in underlying costs: Without prejudice to any other rights of Ours under these Conditions, where there is any increase in the underlying costs incurred by Us in connection with the supply of Goods or Services to You by third parties we may, in our absolute discretion, vary any of Our Rates.

After the initial term we may review and increase our charges at any time after the initial term by giving you not less than 60 Business Days' notice in writing provided that the increase does not exceed 5% of base costs and also that such charges cannot be increased more than once in any 12 month period. This does not apply to third party costs over which we have no control, and which will be passed on promptly by us.

6. All charges, amounts and fees are exclusive of VAT which shall be added to our invoices at the current rate.

7. If you dispute the validity of any invoice, you shall notify us in writing within 14 Business Days of receipt of such invoice.

8. If the Contract for the Managed Services is cancelled or terminated for any reason prior to the Service Start Date, you shall indemnify and reimburse us for all losses, costs, fees and expenses we have reasonably incurred prior to the Service Start Date in preparation for the provision of the Managed Services.

## **9 CHANGE AND VARIATION TO TERMS**

1. We may at any time vary these Terms and Conditions by publishing the varied Terms and Conditions on Our website. You accept that by doing this, we have provided you with sufficient notice of the variation.

If there are specific or major term changes relating to the service schedule they will be published on our website and you will be notified.

2. Aztech may at any time and from time to time improve, correct or otherwise modify all or any of the Services and / or Products (including substituting software and/or Products with software or equipment of similar specification) provided that such modification does not materially adversely affect provision of the Services to the Customer or the functionality of the Products. Aztech will endeavour to give the Customer reasonable notice of any such modification, where this is reasonably practicable.

## **10 INDEMNITIES AND INSURANCE**

1. You shall indemnify us against all claims, actions, proceedings, losses, damages, liability, expenses and costs (including without limitation court costs and reasonable legal fees) incurred by us arising out of or in connection with breach of your obligations under the Contract and/or your use of the Managed Services.

2. We will indemnify you for, from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by you as a result of or in connection with any action, demand or claim that your use of the Deliverables infringes the Intellectual Property Rights of any third party.

3. Where we are the reseller or where are licensing Managed Services (for example, off-the-shelf products) which are owned by a third party, we give no warranty that those Managed Services do not infringe any third party's Intellectual Property Rights. We will use commercially reasonable efforts to transfer to you the benefit of any such

warranty that we receive from our licensor. We cannot exercise any discretion over the type of remedy or the promptness with which that remedy is delivered. We accept no liability for any loss suffered arising from a third party Intellectual Property Right claim including inability to use the Managed Services.

10.4 You shall indemnify us against claims by any third party that Customer Materials provided by you in relation to the Managed Services infringe the Intellectual Property Rights of any third party.

## 11 LIABILITY

1. This clause 11 sets out our entire financial liability (including liability for the acts or omissions of our employees, agents and sub-contractors) to you. This clause must be read in conjunction with the liability clauses contained in the applicable Schedule to the relevant Managed Services.

2. Nothing in this Contract excludes our liability arising from:

11.2.1 death or personal injury caused by our negligence;

11.2.2 fraud or fraudulent misrepresentation; or

11.2.3 any other liability that cannot be excluded as a matter of law.

11.3 Subject to clause 11.2, under no circumstances shall we have any liability arising under or in connection with the Contract for:

11.3.1 direct or indirect loss of profit;

11.3.2 direct or indirect loss of goodwill;

11.3.3 direct or indirect loss of business or contracts;

11.3.4 direct or indirect loss of business opportunity;

11.3.5 direct or indirect loss of anticipated saving;

11.3.6 direct or indirect loss or corruption of data or information; or

11.3.7 special, indirect or consequential damages.

4. Subject to clauses 11.2 and 11.3 and, unless an alternative liability cap is provided in the relevant Schedule to which the Managed Service giving rise to the claim relates, our total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to:

1. where the claim relates to the Managed Services supplied under the Contract, 150% of the actual charges (as stated in the Service Order Form) payable over a period of 12 months immediately preceding the issue giving rise to a claim, for the affected Managed Services.

2. where the claim relates to damage to tangible property, £1,500,000 per event.

11.5 If the performance of our obligations under the Contract is prevented or delayed by any act or omission of you, your agents, subcontractors, consultants or employees, we shall not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.

## 12 CONFIDENTIALITY AND ANNOUNCEMENTS

1. Each party agrees that it may use the other party's confidential information only in the exercise of its rights and performance of its obligations under the Contract and that it shall not disclose the other party's Confidential Information including all knowhow, trade secrets, financial, commercial, technical, tactical or strategic information of any kind except in accordance with this clause.

2. Except as provided for in this clause 12, both parties shall treat all information related to the provision of Managed Services as "Confidential Information".

3. Each party may disclose Confidential Information to its personnel that are directly involved in the provision of the Managed Services and who need to know the information for that purpose. Each party shall ensure that each of its personnel receiving the information pursuant to this clause 12.3 are aware of and comply with the confidentiality obligation set out in this clause 12.

4. Clause 12.1 shall not apply to the extent that:

1. such information was already in the public domain at the time of disclosure;

2. the information was in the possession of the disclosing party without obligation of confidentiality prior to its disclosure;

3. such information was obtained from a third party without obligation of confidentiality;

4. such information was independently developed without access to the other party's Confidential Information;

5. such information is required to be disclosed by law, by a court of competent jurisdiction or by any regulatory or administrative body; or

6. the parties have agreed in writing that specified information related to the provision of Managed Services is not Confidential Information.

12.5 You shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

## 13 PERSONAL DATA

1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

2. The parties acknowledge that:

1. if Aztech processes any personal data on the Customer's behalf in the course of performing the Managed Services, the Customer is the controller and Aztech is the processor for the purposes of the Data Protection Legislation.

2. the personal data may be transferred or stored outside the EEA in order to carry out the Managed Services and Aztech's other obligations under the Contract.

3. Without prejudice to the generality of clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Aztech for the duration and purposes of the Contract so that Aztech may lawfully use, process and transfer the personal data in accordance with this Contract on the Customer's behalf.

4. Without prejudice to the generality of clause 13.1, Aztech shall, in relation to any personal data processed in connection with the performance by Aztech of its obligations under this Contract:

1. process that personal data only on the documented written instructions of the Customer unless Aztech is required by the laws of any member of the European Union or by the laws of the European Union applicable to Aztech and/or Domestic UK Law (where "Domestic UK Law" means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data ("Applicable Laws"). Where Aztech is relying on Applicable Laws as the basis for processing personal data, Aztech shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Aztech from so notifying the Customer;

2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Aztech, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, 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 (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

3. not transfer any personal data outside of the EEA unless the following conditions are fulfilled:

1. the Customer or Aztech has provided appropriate safeguards in relation to the transfer;

2. the data subject has enforceable rights and effective legal remedies;

3. Aztech complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

4. Aztech complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

4. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

5. notify the Customer without undue delay on becoming aware of a personal data breach;

6. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and

7. maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and immediately inform the Customer if, in the opinion of Aztech, an instruction infringes the Data Protection Legislation.

13.5 The Customer consents to Aztech appointing third-party processors of personal data under this agreement. Aztech confirms that it has entered or (as the case may be) will enter with the relevant third-party processors into a written agreement incorporating terms which are substantially similar to those set out in this clause 13. As between the Customer and Aztech, Aztech shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.

## 14 INTELLECTUAL PROPERTY RIGHTS

1. Except for as expressly stated in this clause no Intellectual Property Rights of either party are transferred or licensed as a result of this Contract.

2. Subject to clause 14.1 and the Schedules, all Intellectual Property Rights, Deliverables and/or Pre-Existing Materials in or arising out of or in connection with the Managed Services are owned by us or our licensors. We grant you a temporary, non-transferrable, royalty-free licence to use the Intellectual Property Rights contained in the Pre-Existing Materials and Deliverables strictly for the purpose for which they are provided to you, and this licence shall immediately cease when the Contract is terminated or expires. Any Intellectual Property Rights in developments to the Pre-Existing Materials or Deliverables shall vest automatically in us.

14.3 You acknowledge and accept that, where we do not own the Pre-Existing Materials, your right to use them is conditional on us obtaining a licence (or sub-licence, as appropriate) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you.

## 15 OUR RIGHT TO SUSPEND THE MANAGED SERVICES

1. We may suspend the Managed Services immediately:

1. if, after a further written warning from us, you fail to pay any amount due under the Contract on the due date for payment;

2. if you commit a material breach of any of the terms of the Contract and (if such a breach is remediable) fail to remedy that breach within 30 days of being notified by us in writing of the breach;

3. if you become subject to any of the events listed in clause 16.1.2;

4. if in our reasonable opinion you fail to perform or observe any term of the Contract, in which case the Managed Services shall remain suspended until such time as you demonstrate to our reasonable satisfaction that you have remedied the issue;

5. where we become aware or have reasonable suspicions that fraudulent and/or illegal misuse has taken place or is likely to take place; or

15.1.6 we are required to do so by law.

15.2 In addition to any specific rights set out in the relevant Schedule, on suspension of the Managed Services any outstanding invoices shall become immediately payable.

## 16 TERMINATION

1. Without prejudice to any other rights or remedies to which both parties may be entitled, either party may terminate this Contract without liability to the other if:

1. the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

2. an order is made or a resolution is passed for the dissolution or winding-up of the other party or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the other party or its trustees, officers, directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a

winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.

16.2 Expiry, termination or cancellation of this Contract shall not automatically result in the expiry, termination or cancellation of any other contracts between you and us.

## 17 EFFECT OF TERMINATION

1. In addition to any specific rights set out in the relevant Schedule, on expiry, termination or cancellation of the Contract for any reason:

1. any outstanding approved invoices shall become immediately payable;

2. any licences or other permissions granted by (or on behalf of) us shall immediately terminate in line with the notice period

3. you shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to us and which are supplied as part of this Contract; and

4. we may destroy or otherwise dispose of all and any of the data collected from the supply of the Managed Services, unless we receive a written request from you no later than 10 Business Days after the expiry or termination of the Contract for its delivery or return to you (all reasonable expenses incurred for such delivery or return shall be borne by you).

17.2 The accrued rights of both parties as at expiry, termination or cancellation, or the continuation after expiry, termination or cancellation of any provision expressly stated to survive or implicitly surviving, shall not be affected or prejudiced.

## 18 EXIT ASSISTANCE

1. Upon request, we will prepare or update a detailed plan for the orderly transition of the Managed Services from us to you or your nominated replacement supplier. We shall use reasonable endeavors to ensure the orderly transition of the Services from the Supplier to the Client or any Replacement Provider in the event of termination (including partial termination) or expiry of this Contract and the Supplier shall be permitted to charge for any such assistance on a time and materials basis in accordance with the Supplier's then current rate card basis in accordance with clause 8.1 for any such services.

## 19 NON-SOLICITATION

1. You shall not (except with our written consent) directly or indirectly solicit or entice away (or attempt to do so) any person employed or engaged by us in the provision of the Managed Services under the Contract at any time during the term of the Contract or for a period of 6 months after its termination or expiry.

2.If you breach the above clause, you will on demand pay to us as compensation an amount equal to 12 months' salary or fee of the relevant employee or contractor (as the case may be). You and we acknowledge that this represents a genuine pre-estimate of the loss likely to be suffered through breach of this clause.

3.If the periods above are held by a court or tribunal of competent jurisdiction to be void or unenforceable, such provisions will apply with such modification to the relevant wording as required to make them valid and enforceable.

## 20 FORCE MAJEURE

1.A party shall not be liable if delayed in or prevented from performing its obligations due to acts, events, omissions or accidents beyond its reasonable control, including, strikes, lock-outs or other industrial disputes (whether involving its workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, fire, flood or storm ("Force Majeure Event").

2. Each party agrees to:

1.promptly notify the other of the Force Majeure Event and its expected duration; and

2.use reasonable endeavours to minimise the effects of that event.

3. If, due to Force Majeure Event, a party:

1.is or shall be unable to perform a material obligation; or

2.is delayed in or prevented from performing its obligations for a continuous period exceeding 4 weeks or a total of more than 8 weeks in any consecutive period of 12 months;

the other party may terminate the Contract on immediate notice in writing.

## 21 DISPUTE RESOLUTION

1.We shall attempt to resolve any dispute with you arising in relation to the Contract through negotiation between respective personnel who have authority to settle such dispute, in the first instance being between account managers and then (where necessary) escalated to respective senior executives. If the matter is not resolved through negotiations, then the procedure set out below will apply.

3. This clause 21 shall not:

1.prevent us from seeking from any court of competent jurisdiction, an interim order restraining you from doing any act or compelling you to do any act; or

2.apply to any action taken to recover any unpaid invoices or debts due to us.

## 22 NOTICES

1.Any notice given under the Contract shall be in writing and shall be delivered by email or hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business as set out in the Service Order Form.

2. Any notice shall be deemed to have been received:

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

2.if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

3.if sent by email to the correct address shown in the Service Order Form, at 9.00 am the next Business Day, provided that the notice is also sent via pre-paid first-class post within 2 Business Days from the date that the email is sent.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action.

## 23 GENERAL

1. Assignment.

1.You may not assign or transfer this Contract without our prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

23.1.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract. We will endeavour notify you of such an event in writing and will ensure that any third party to which the Contract is assigned, transferred or subcontracted will be obliged to continue honouring the terms of the Contract in the form that they were in prior to the assignment, transfer or sub-contract.

2.Entire Agreement. The Contract forms the entire agreement between the parties with regard to its subject matter and no other terms, conditions, warranties or statements (unless fraudulent) will apply. Each party acknowledges that in entering into the Contract it does not do so on the basis of, and does not rely on any representation, unless made fraudulently, warranty or other provision not expressly contained in the Contract.

3.Variation. Any variation to the Contract must be in writing and signed on behalf of both parties.

4.No Partnership or Agency. Nothing in this Contract constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

5.Severability. If a court decides that any part of the Contract cannot be enforced, that particular part of the Contract will not apply, but the rest of the Contract will.

**7. Third Party Rights.**

1.No person other than a party to this Contract shall have any rights to enforce any terms of this Contract. Nothing in this Contract shall create (or be deemed to create) a partnership or agency between the parties.

8.Governing Law and Jurisdiction. This Contract and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Both parties agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract, its subject matter or formation (including non-contractual disputes or claims).