

TRUSTMARQUE SOLUTIONS LIMITED – TERMS AND CONDITIONS

1. These terms and conditions which consist of the Sections listed below (these "**Conditions**") apply to all contracts that We enter into with our customers for the provision of "**IT Supplies**" to them:

SECTION A – DEFINITIONS AND INTERPRETATION

SECTION B – GENERAL TERMS

SECTION C – SOFTWARE AND HARDWARE SUPPLY TERMS

SECTION D – ONLINE PURCHASING PORTAL TERMS

2. Section A contains the definition and interpretation provisions that apply to these Conditions generally.
3. Section B contains the general terms which apply to orders for all IT Supplies.
4. Section C only applies where they are applicable to the IT Supplies being ordered.
5. Section D only applies when using the Online Purchasing Portal
6. Unless and until superseded by any new Conditions that we may post on this Website, these Conditions apply to all Statements of Work and/or Orders.
7. Unless otherwise stated in a quotation or a price guide, a price is valid until the end of the month in which it is quoted only, and unless otherwise agreed in writing, We may withdraw it at any time by notice to You.
8. Each Order or acceptance of a quotation for IT Supplies by You shall be deemed to be an offer by You subject to these Conditions. You shall ensure that Your order is complete and accurate and You are liable for any errors or omissions on your order.
9. A binding contract shall not come into existence between Us and You unless a Statement of Works is signed by both parties, until We issue a written Order acknowledgement to You or We commence delivery of the IT Supplies to You (whichever occurs earlier).
10. No Order which has been acknowledged by Us may be cancelled by You, except as provided in these Conditions and/or a Statement of Works and provided that You indemnify, subject to the general limitation of liability in Clause 10, Us in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Us as a result of cancellation.
11. Any advice or recommendation given by Us or Our employees or agents to You or Your employees or agents as to the storage, application or use of the goods which is not confirmed in writing by Us is followed or acted upon entirely at Your own risk, and accordingly We shall not be liable for any such advice or recommendation which is not so confirmed.
12. Unless expressly agreed in writing by Us, all descriptions, drawings, designs, specifications and particulars of weight and dimensions submitted by Us are approximate only and We shall have no liability in respect of any designs or specifications not prepared by Us and You shall indemnify Us against any and all liabilities and expenses incurred by Us arising therefrom.

13. It is suggested that you download and retain a copy of these Conditions if you have or will be placing an Order or signing a Statement of Works.
14. Phone calls received and made by Us may be recorded for training and quality measurement purposes. All call recordings are treated as confidential information and are only available for review by authorised staff.

SECTION A – DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

1.1 In these Conditions the expressions which follow are given these meanings unless otherwise defined:

- 1.1.1 **"Acceptance Criteria"** means the acceptance criteria as referred to in a Statement of Work or as otherwise agreed by the Parties expressly in writing after the date of the Statement of Work against which the Acceptance Tests are to be carried out to determine whether the Deliverables meet the Statement of Work.
- 1.1.2 **"Acceptance Tests or Testing"** the acceptance tests as specified or referred to in the Statement of Work or as agreed between the Parties in writing, to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.
- 1.1.3 **"Applicable Laws"** means any legislation in force from time to time that We can be reasonably expected to be aware of in relation to the IT Supplies;
- 1.1.4 **"Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday throughout England and Wales or Scotland;
- 1.1.5 **"Commencement Date"** means the earlier of the date specified as such in the Statement of Works/Order or the commencement of delivery of the IT Supplies;
- 1.1.6 **"Confidential Information"** means (i) Your Input Data; (ii) the Deliverables; (iii) the terms of any Statement of Works/Order; and (iv) any and all other confidential information in any form or format disclosed by or on behalf of one Party to the other Party under or in connection with any Statement of Works/Order at any time (whether before, upon or following the entry into force of these Conditions), which information is marked as confidential or otherwise designated (whether orally or in writing, including in the latter case in terms of the following provisions of this definition) by the person supplying it as 'confidential', or which by its nature is clearly confidential. Confidential Information includes any information in relation to the past, present and potential future finances, policies, procedures, plans, products, services, contractual arrangements, staff, customers or other of Our contractors and/or those of any of Our Group Companies;
- 1.1.7 **"Consumption"** means subscription licences that are billed based on actual usage.
- 1.1.8 **"Contract Governance Arrangements"** means the contract governance arrangements set out in any Statement of Works/Order;
- 1.1.9 **"Data Protection Legislation"** means the Data Protection Act 2018, the General Data Protection Regulation ((EU 2016/679) or any replacement legislation applicable in England and Wales from time to time and any other applicable laws relating to the processing of personal data;

- 1.1.10 **"Deliverables"** means any works, materials or other output in any form or format whatsoever (including drafts) produced or supplied by or on Our behalf for or to You, as part of the IT Supplies, including any such works, materials or other output specified in any Statement of Works or Order;
- 1.1.11 **"Discloser"** means, in respect of any Confidential Information, the Party by or on behalf of which that Confidential Information is disclosed, except that both Parties will be treated as the "Discloser" of the terms of these Conditions;
- 1.1.12 **"Fees"** means the fees specified in, or calculated in accordance with, any Statement of Works/Order;
- 1.1.13 **"Force Majeure Event"** means any cause affecting the performance by a Party of its obligations under any Statement of Works/Order arising from acts, events or omissions beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving Our workforce or the workforce of any other party), failure of a utility service or transport network, default of suppliers or sub-contractors, act of God, war, riot, civil commotion, act or threats of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of IT equipment, fire, flood or storm;
- 1.1.14 **"Group Company(ies)"** means, in relation to a Party:
- 1.1.14.1 any subsidiary of that Party;
- 1.1.14.2 the holding company of that Party (if any); and
- 1.1.14.3 any other subsidiary of that holding company;
- and for these purposes the terms "subsidiary" and "holding company" each have the meaning given to them in section 1159 of the Companies Act 2006;
- 1.1.15 **"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, rights in computer programs, rights in websites including domain names and the "look and feel" of any websites, rights in documents, rights in techniques, rights in business methods, rights in drawings, rights in logos, rights in instruction manuals, rights in lists and procedures, rights in marketing methods and procedures and advertising literature, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 1.1.16 **"IT Supplies"** means any services, Software, Hardware, and/or other information technology product which We have agreed to supply to You under, and is described in, a Statement of Works or Order;
- 1.1.17 **"Manufacturer"** means the original manufacturer of goods or for software the author or licensor of the program or where appropriate their legal representatives in the United Kingdom.
- 1.1.18 **"Order"** means the order confirmation for IT Supplies from You, where no further agreement is signed by both parties.

- 1.1.19 **"Our Group"** means Us and our Group Companies;
- 1.1.20 **"Parties"** means Us and You as parties to the relevant Statement of Works or Order;
- 1.1.21 **"Project Milestones"** means the dates (if any) identified as such in the Project Timetable;
- 1.1.22 **"Project Timetable"** means the timetable (if any) for the provision of the IT Supplies which appears in the Statement of Works or Order;
- 1.1.23 **"Published Specifications"** means the Manufacturers specification for goods listed, valid at the time of acceptance of an order from You.
- 1.1.24 **"Recipient"** means, in respect of any Confidential Information, the Party to which that Confidential Information is disclosed under any Statement of Works/Order, except that both Parties will be treated as the "Recipient" of the terms of any Statement of Works/Order;
- 1.1.25 **"Relief Event"** means the following events:
- 1.1.25.1 any failure by You to comply with Your obligations under these Conditions, a Statement of Work or Order;
 - 1.1.25.2 any error or malfunction in the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, You or any of Your agents or contractors or any other software, hardware or systems for which We are not responsible or any failure by the You, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which We are not responsible;
 - 1.1.25.3 any failure by You or Your agents or contractors (including any existing service provider) to provide any information, co-operation, or instructions to Us which is reasonably required by Us for the proper performance of Our obligations under these Conditions, a Statement of Work or Order;
 - 1.1.25.4 any telecommunications network defect, delay or failure or failure of Your hardware or other systems; and/or
- 1.1.26 any of the causes or events set out in Clause 9.7.
- 1.1.27 **"Statement of Works"** means any contract, inclusive of any Order/s (and any subsequent document(s)) that the Parties enter into for the provision of IT Supplies and/or Deliverables to be provided by Us to You, which is subject to these Conditions.
- 1.1.28 **"Third Party"** means any third party that supplies Third Party Services to Us and/or You (as the case may be) during the provision of the IT Supplies.
- 1.1.29 **"Third Party Services"** means any services, goods, code, or software programs written or provided by a Third Party which are used during the provision of the IT Supplies.
- 1.1.30 **"Term"** means the term of the Statement of Works or IT Supplies stated in any Order;
- 1.1.31 **"Us"** means Trustmarque Solutions Limited, a company incorporated in England Wales (registered number 02183240), whose registered office is at Marlborough House, Westminster Place, York Business Park, York, United Kingdom, YO26 6RW and similar expressions such as "We", "Our" and "Ours" shall be construed accordingly;

- 1.1.32 **"User Licence"** means the end user licence agreement or other third-party terms applying to the Software provided to You by the licensor of the Software.
 - 1.1.33 **"VAT"** means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;
 - 1.1.34 **"Website"** means the website url www.trustmarque.com (or any website that We may operate in replacement thereof from time to time);
 - 1.1.35 **"You"** means the person, firm or company who purchases the IT Supplies from Us and similar expressions such as "Your" and "Yours" shall be construed accordingly;
 - 1.1.36 **"Your Data"** means any personal data which is transmitted by or on behalf of You, or is otherwise processed by Us under this agreement or which is generated under this agreement
 - 1.1.37 **"Your Input Data"** means any information and works in any form or format whatsoever disclosed to Us by You or on Your behalf for use by Us in supplying the IT Supplies and includes the physical embodiment of any such information and works (if any) listed in the Statement of Works or Order as part of Your Property; and
 - 1.1.38 **"Your Property"** means the equipment, materials and other items listed in the Statement of Works or Order as resource requirements that You will provide.
- 1.2 Unless the context requires a different interpretation or these Conditions expressly provides otherwise, the following rules will be used to interpret these Conditions:
- 1.2.1 Any reference to a statute, a statutory instrument or a provision of either includes references to that statute, statutory instrument or provision as amended, extended, applied, consolidated or re-enacted from time to time, whether before, on or after the Commencement Date and, in the case of a statute or a provision of that statute, will be interpreted as including any subordinate legislation made under that statute or that provision from time to time.
 - 1.2.2 Words used in the singular will be interpreted to include the plural and vice versa.
 - 1.2.3 A reference to a Party to these Conditions includes that Party's permitted successors, transferees, and assignees.
 - 1.2.4 A reference to a "person" is to any legal person, including any individual, partnership, company, or other body corporate.
 - 1.2.5 The word "including" means "including but not limited to" and "include" and "includes" will be interpreted accordingly.
 - 1.2.6 Except if and to the extent that these Conditions expressly provide otherwise, any reference to recording or communicating any matter in "writing" will be interpreted as excluding email, and "written" will be interpreted accordingly.
 - 1.2.7 The word "disclose" includes permitting a person to access information in any manner or imparting that

information orally or by demonstration and any other tense or part of that verb will be interpreted accordingly.

- 1.3 Where a word or phrase is defined anywhere in these Conditions, whether in this Clause 1 or elsewhere, that word or phrase will have the meaning given to it in that definition wherever it is used throughout these Conditions.
- 1.4 The clause headings in these Conditions and any Statement of Works or Order do not create legal rights or obligations, nor affect the meaning of these Conditions.
- 1.5 In the event of any conflict or inconsistency between the terms of an agreed Statement of Works or Order, these Conditions and/or the User Licences, the following order of priority shall apply (in decreasing order) to the extent of such inconsistency or conflict:
 - 1.5.1 the Statement of Work or Order;
 - 1.5.2 the User Licences;
 - 1.5.3 these Conditions.
- 1.6 Where these Conditions use an English legal term and the relevant provision of these Conditions is being considered in the context of a jurisdiction other than England and Wales, the term will be interpreted as referring to that which most nearly approximates to the English legal term in such other jurisdiction.

SECTION B - GENERAL TERMS

2. Application of Section B to all Statements of Works and any Orders

The general terms of Section B of these Conditions apply to and are deemed incorporated within all Statements of Works and any Orders placed by You to the exclusion of any terms and conditions or other contractual terms or arrangements proposed by You except to the extent expressly agreed by Us in the Statement of Works or Order.

3. IT Supplies

- 3.1 We will use reasonable endeavours to provide the IT Supplies and/or Deliverables to You in accordance with:
 - 3.1.1 the Statement of Works or Order in all material respects;
 - 3.1.2 all Applicable Laws; and
 - 3.1.3 the Project Timetable, recognising however that the dates set out in the Project Timetable shall be estimates only and time shall not be of the essence of these Conditions.
- 3.2 All IT Supplies, Supplied by Us to You shall be in accordance with;
 - 3.2.1 The current edition of the relevant Published Specifications as published from time to time by the Manufacturer (copies which are available from Us upon request);
 - 3.2.2 The specifications or descriptions (if any) expressly listed in the Statement of Works or Order. No other specifications, descriptive material, written or oral presentation, correspondence, or statement, promotional or sales literature shall form part of or be incorporated by reference into the Statement of Works or Order; and

3.2.3 The quantity and description of any specification for IT Supplies shall be those set out in the Statement of Works or Order. We reserve the right to make any changes in the specification of IT Supplies which are required to conform to any applicable safety regulations or other statutory requirements.

4. Your obligations

4.1 You shall:

- 4.1.1 co-operate with Us in all matters relating to the IT Supplies;
- 4.1.2 provide in a timely manner such access to Your premises, Your Property and data (including Your Input Data), and such office accommodation, computer, systems, networks and other facilities, as is requested by Us and/or as indicated as being required from You in the Statement of Works or Order as necessary to enable us to perform the IT Supplies;
- 4.1.3 provide in a timely manner such information as We may request, and ensure that such information is accurate in all material respects;
- 4.1.4 be responsible (at Your own cost) for preparing the relevant premises for the supply of the IT Supplies;
- 4.1.5 comply with all Applicable Laws in respect to Your activities under these Conditions and the applicable Statement of Work;
- 4.1.6 ensure it has suitable licences in place for any third-party software required (which is not issued or procured by Us) to allow the Us and Our subcontractors (if used) full use in relation to the IT Supplies provided;
- 4.1.7 not use the IT Supplies to receive, store or transmit material or data that is obscene, threatening, offensive, discriminatory, defamatory or in breach of confidence, infringes Intellectual Property Rights or other rights, gives rise to any cause of action against Us in any jurisdiction or is otherwise unlawful, and We reserve the right, without liability or prejudice to its other rights to You, to disable the Your access to any material that breaches the provisions of this sub-clause;
- 4.1.8 agree that if, in the course of performing the IT Supplies, it is reasonably necessary for Our performance of Our obligations under a Statement of Work or Order for Us to access or use any equipment, software or data of Yours (or which is in Your possession) then it shall where it is able to do so grant to You and any of Your subcontractors a non-exclusive, royalty free, terminable licence to use the same solely for the purpose of delivering the IT Supplies only for as long as is strictly necessary to deliver such IT Supplies;
- 4.1.9 make available all resources as reasonably requested by Us in the execution of Our obligations under these Conditions;
- 4.1.10 keep and maintain all materials, equipment, documents and other property of or provided by Us which are for the time being at Your premises in safe custody at the Your own risk and maintain them in good condition until returned to the Us and not dispose of or use them otherwise than in accordance with the Our written instructions or authorisation;
- 4.1.11 fully virus check all data you supply to Us;
- 4.1.12 carry out all of Your responsibilities set out in these Conditions and the Statement of Work in a timely and efficient manner. In the event of any delays in Your provision of such assistance as agreed by the Parties, We may adjust any Project Timetable as reasonably necessary.
- 4.1.13 where a Microsoft Cloud service is deployed/utilised within the Services (Azure, Enterprise Mobility Suite or Office365) We shall be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR)

and/or Digital Partner of Record (DPOR) and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) (as applicable) and/or given Delegated Administration Privileges (DAP) and/or Granular Delegated Admin Privileges (GDAP) and/or Admin on Behalf of (AOBO) (as applicable) for the Initial and Subsequent Term (if applicable) of the applicable Statement of Work. For the avoidance of doubt, in the event Microsoft adds to, updates and/or replaces any of the foregoing designations, this Clause 4.1.13 will apply to any such added, updated and/or replaced designations from time to time; and

4.1.14 in respect of any Microsoft funded services (if applicable), sign and deliver the Microsoft Proof of Execution ("POE") within seven (7) days of the date of issue by Microsoft. In the event that You do not return the POE within the seven (7) days' notice period, We may charge You the amounts directly and You shall follow the payment terms in these Conditions.

4.2 To the extent that We require access to Your premises to perform the IT Supplies, You shall provide such access during Our normal business hours and to provide a suitable work environment to enable Us to perform such IT Supplies subject to the Us complying with such internal policies and procedures of Yours (including those relating to security and health and safety) as may be notified to Us reasonably in advance and in writing.

4.3 Where the provision of the IT Supplies requires Us to ensure that certain resources are made available at a time and location agreed by both Parties and/or as set out in the Project Timetable, if You are unable to fulfil Your obligations in relation to such activities at such time and location or wish to cancel or postpone the activity so that the resources are not required at the agreed time and/or location then You must give Us notice in accordance with Clause 19 (Notices) not less than 5 Business Days prior to the date of such activity. If you give us less notice than required, you will be required to pay cancellation charges equivalent to 100% of the Fees for the IT Supplies that were scheduled to be provided at that time.

4.4 Where the IT Supplies includes the provisions of the services under Section C (to the extent that it relates to Software), D or E of these Conditions, You undertake that:

4.4.1 You will not allow or suffer any user subscriptions for those services to be used by more than one individual authorised user ("**Authorised User**") unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the applicable Third Party Services;

4.4.2 each Authorised User shall keep any passwords or multi-factor authentication used confidential;

4.4.3 You shall maintain a written, up to date list of current Authorised Users and provide such list to Us within five (5) Business Days of Our written request from time to time;

4.4.4 You shall permit Us to audit the Your use of the Third-Party Services for each Authorised User. Such audit may be conducted no more than once per quarter, at Our expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with Your normal conduct of business;

4.4.5 if any of the audits referred to in Clause 4.4.4 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Our other rights, You shall promptly disable such passwords and We shall not issue any new passwords to any such individual; and

4.4.6 if any of the audits referred to in Clause 4.4.4 reveal that the Client has underpaid Fees to the Supplier and/or individuals are using the Third Party Services who are not Authorised Users, without prejudice to Our other rights, You shall pay to Us an amount equal to such underpayment within ten (10) Business Days of the date of the relevant audit or upon Our request and promptly disable access to such individuals.

4.5 We shall not be liable to You if Our performance of Our obligations under any Statement of Work or Order is prevented or delayed by:

4.5.1 any act, omission, or failure to comply with any obligations under these Conditions of You or Your

agents, sub-contractors, or employees;

4.5.2 any error or malfunction in the Your systems or any other software, hardware or systems for which We are not responsible or any failure by the You, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which the We are not responsible; and/or

4.5.3 any telecommunications network defect, delay, or failure (together a **"Relief Event"**)

4.6 Subject to Clause 4.3, if an event set out in Clause 4.5 occurs, You shall be liable to pay to Us on demand all reasonable costs, charges or losses sustained or incurred by Us (including, without limitation, any loss of opportunity to deploy resources elsewhere), subject to Our confirmation and evidence of such costs, charges and losses to You in writing, and provided We have taken all reasonable steps to mitigate such costs, charges and/or loss. For the avoidance of doubt, such costs, charges, and losses may include any such costs, charges, or expenses that We incur to Our sub-contractors.

4.7 You shall not, without Our prior written consent, at any time from the Commencement Date to the expiry of six months after the completion of the IT Supplies, solicit or entice away from Us or employ or attempt to employ any person who is, or has been, engaged by Us as an employee or sub-contractor in relation to the relevant IT Supplies. In the event that You are in breach of this Clause, you shall pay to Us an amount equal to fifty percent (50%) of the gross annual salary of the person so employed or engaged. You acknowledge that this is a reasonable estimate of the loss which would be incurred.

4.8 We shall not be liable for any delays or claims of whatsoever nature, which result, directly or indirectly, from the failure by You to comply with our reasonable requests or the breach by You of any provision of these Conditions or the Statement of Work.

4.9 In the event that You are in breach your obligations under these Conditions (excluding payment obligations) then We shall provide written notice of such breach, specifying in detail the nature of the breach and providing thirty (30) days' notice to remedy such breach if capable of remedy. If You fail to remedy such breach, then We shall be entitled to terminate or suspend the IT Supplies without prejudice to any pre-existing rights and obligations of either Party. We shall have no liability or responsibility should the IT Supplies fail to comply with the Statement of Works or Order as a result of You (including without limitation any of its employees, subcontractors or any of its staff) being in breach of these Conditions, the Statement of Work or Order and/or such suspension or termination.

4.10 For the avoidance of doubt, if We suspend the IT Supplies pursuant to these Conditions, You shall remain liable to pay all Fees as though the IT Supplies had continued as agreed under the Statement of Work for the period of suspension.

4.11 You acknowledge that all back-up shall be Your sole responsibility unless otherwise set out as a service within the relevant Statement of Work.

5. Acceptance of IT Supplies

5.1 The relevant Statement of Work shall specify the Deliverables or IT Supplies (as the case may be) that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.

5.2 In relation to any Acceptance Testing:

5.2.1 You shall have a reasonable period of time, up to five (5) Business Days unless otherwise specified in the Statement of Work, from Our delivery of each Deliverable under the relevant Statement of Work (the **"Acceptance Period"**) to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties. If You determine that a Deliverable does not conform to the Acceptance Criteria, You shall by the last day of the Acceptance Period provide to Us a list of the non-conformities to the Acceptance Criteria.

- 5.2.2 You shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify Us within the Acceptance Period if any of the Deliverables do not conform to the Acceptance Criteria. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to Us during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out below.

5.3 If:

- 5.3.1 You do not provide any written comments or otherwise fail to reject any Deliverable in the relevant Acceptance Period;
- 5.3.2 You commence live running of the whole or part of such Deliverable other than in the course of undertaking Acceptance Testing; or
- 5.3.3 if Deliverables or IT Supplies are found to conform with the Statement of Work;

then for all purposes under this Agreement, such Deliverable shall be deemed accepted from the date of notification of delivery of the Deliverable pursuant to Clause 5.2.1.

- 5.4 If there are any non-conformities within any Deliverable, which have been highlighted by You or Us during the Acceptance Period and whereby the Deliverable has not been accepted by You for this reason and such non-conformity is a directly attributable an act or omission on Our part (and not subject to a change request under Clause 7 or attributable to Your acts or omissions including inadequate Acceptance Testing), We shall (without prejudice to Your other rights and remedies) carry out all necessary remedial work without additional charge.
- 5.5 If any non-conformity cannot be remedied by You due to an error, defect or fault which We are able to demonstrate to Your reasonable satisfaction to be outside of Our control and which has disabled Our ability to remedy such non-conformity, then We reserve the right to terminate work on that specific Deliverable. We agree not to charge You, any amounts paid or payable by You to Us which specifically relate to the non-conforming Deliverable which cannot be remedied.

6. Fees, invoicing, and payment

- 6.1 The Fees, invoicing and payment information shall be confirmed in writing by Us in the Statement of Works or Order.
- 6.2 Clause 6.3 to 6.6 shall apply if any part of the IT Supplies are to be provided on a time-and-materials basis. Clause 6.7 and Clause 6.10 shall apply if any part of the IT Supplies is to be provided for a fixed price. The remainder of this Clause shall apply in either case. The provisions in this Clause are without prejudice to the provisions of Clause 33 where they apply.
- 6.3 Unless otherwise stated in the Statement of Works or Order, where the Statement of Works or Order provides that any part of the IT Supplies are to be provided on a time-and-materials basis:
- 6.3.1 The Fees payable for the IT Supplies shall be calculated in accordance with Our standard daily Fee rates as amended from time to time;
- 6.3.2 Our standard daily Fee rates are calculated on the basis of a seven and half hour day worked between 8.00 and 5.30 pm on Business Days;
- 6.3.3 We shall be entitled to charge at an overtime rate as stated in Our rate card. Where it is not stated We are entitled to charge 150% of the normal rate for time worked by members of Our team outside the hours referred to in Clause 6.3.2 on a pro-rata basis;
- 6.3.4 We shall require all members of the team to complete time sheets recording time spent in providing the IT

Supplies, and We shall use such time sheets to calculate the Fees covered by each monthly invoice referred to in Clause 6.3.5; and

6.3.5 Unless otherwise stated in the Statement of Works or Order We shall invoice You monthly in arrears for Our Fees for time, expenses, and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Clause 6. Each invoice shall set out the time spent by each member of Our team.

6.4 Subject to Clause 6.5 below, the Fees relating to the IT Supplies may increase on an annual basis with effect from each anniversary of the date of signature of the applicable Statement of Work in line with the percentage increase in the Retail Prices Index in the preceding twelve (12) month period.

6.5 For the avoidance of doubt, We may increase any fees related to Third Party Services in line with any increases imposed upon Us by such third parties upon reasonable notice and in line with the terms of the User Licence and/or the Microsoft Customer Agreement.

6.6 Notwithstanding and subject to Clauses 6.4 and 6.6, We reserve the right, on giving You sixty (60) days' notice, to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. If You do not agree with this increase, then You may terminate the affected Statements of Work at the end of the then current term upon thirty (30) days written notice and before such price increase takes effect. If We do not receive written notice within thirty (30) days, You are deemed to have agreed to the amendment to the Fees.

6.7 Where the Statement of Works or Order provides that any of the IT Supplies are provided for a fixed price the Fees for the IT Supplies shall be the amount set out in the Statement of Works or Order. The total price shall be paid to Us (without deduction or set-off) in instalments as set out in the Project Timetable on Us achieving the corresponding Project Milestone. On achieving a Project Milestone, We shall invoice You for the Fees that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in Clause 6.

6.8 Where a Fee has been quoted, this is a best estimate based on the information given to Us by You and/or which is available at that time and may be based on a number of assumptions set out in the Statement of Work ("**Assumptions**"). If it materialises that in Our reasonable opinion, the information provided and/or Assumptions made are incorrect, inaccurate or have changed and/or that the proposed scope of IT Supplies is not feasible, We shall be entitled to charge (at the Our current Rates) You for any out of scope IT Supplies or other additional services provided to those detailed in the Statement of Work together with all related costs and expenses incurred by Us.

6.9 Where the Statement of Works or Order does not contain a Project Timetable, We may invoice You on the dates otherwise set out in the Statement of Works or Order or otherwise on delivery of the IT Supplies and/or the Deliverables.

6.10 Any fixed Fees exclude:

6.10.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the team in connection with the provision of the IT Supplies, and the cost of any materials or services reasonably and properly provided by third parties required by Us for the provision of the IT Supplies. Such expenses, materials and third-party services shall be invoiced by Us at cost; and

6.10.2 VAT, which We shall add to Our invoices at the appropriate rate. Should You be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Fees payable shall be increased by the

amount of such tax to ensure that We receive a sum equal to the amount to be paid under the applicable Statement of Work.

- 6.11 You shall pay each invoice submitted to You by Us in full without deduction or set-off, and in cleared funds, within 30 days of the date of the invoice.
- 6.12 All payments by You under these Conditions shall be in United Kingdom pound sterling unless otherwise agreed or set out in the Statement of Work and shall be paid to Our bank account as advised to You in writing.
- 6.13 Without prejudice to any other right or remedy that We may have, if You fail to pay Us on the due date We may:
 - 6.13.1 charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of The Bank of England accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Alternatively, We may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - 6.13.2 suspend the provision of all IT Supplies until payment has been made in full; and
 - 6.13.3 recover all costs and expenses incurred in pursuing such late or non-payment including, but not limited to, reasonable legal fees and disbursements, administrative costs, and collection agency fees. You shall reimburse Us for all such costs and expenses within seven (7) days of an invoice detailing the same.
- 6.14 In the event that You are in breach of Your payment obligations then We shall provide written notice of such breach, specifying in detail the nature of the breach and providing seven (7) days' notice to remedy such breach if capable of remedy. If You fail to remedy such breach, We shall be entitled to terminate the IT Supplies without prejudice to any pre-existing rights and obligations of either Party. We shall have no liability or responsibility should the IT Supplies fail to comply with the Statement of Works or Order as a direct result of You (including without limitation any of its employees, subcontractors, or any of its staff) being in breach of your payment obligations.
- 6.15 You shall not be able to dispute any amounts which have been paid by You after a period of three (3) months has elapsed from the date of invoice.
- 6.16 All payments payable to Us under the Statement of Works/Order shall become due immediately on termination of the Statement of Works or Order, despite any other provision.
- 6.17 We may, without prejudice to any other rights We may have, set off any liability that We may have to You against any liability of You may have to Us.
- 6.18 For all Consumption subscriptions ("Consumption Subscriptions"), the You agree and acknowledge that:
 - 6.18.1 We shall make available to You via the portal your monthly use reports based on Your monthly usage of the relevant Third-Party Service in accordance with the requirements set out in the applicable Statement of Work.
 - 6.18.2 You shall no later than the 5th of each month report Your use of the Consumption Subscriptions to Us for the preceding month, which You shall certify as being accurate and complete. Should You fail to provide the monthly report, then We shall report the use of the Consumption Subscriptions, acting reasonably, that We believe is an accurate use of the Consumption Subscriptions or as reported back to Us by the applicable Third Party, and You shall be bound to pay licence fees to Us accordingly.
 - 6.18.3 In the event that Your use of the Consumption Subscription proves to be greater than the use reported, You shall reimburse Us in full for any claims from Our third parties, including Microsoft, in respect of Your use of the Consumption Subscription.
 - 6.18.4 any adjustments or revisions to the monthly use report must be provided by You within seven (7) days of

- the original invoice date together with a detailed explanation of the adjustment or revision;
- 6.18.5 Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Statement of Work, Order and/or User Licences and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
 - 6.18.6 Consumption Subscriptions may be subject to a cap. It will be billed at the next billing cycle including all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for the applicable Third-Party Service sold on a Consumption basis may change during the subscription period;
 - 6.18.7 where applicable, it shall pay all such usage and is responsible for monitoring its Consumption needs. For the avoidance of doubt, this includes payment for all such usage where You have knowingly or unknowingly subscribed to such Consumption Subscriptions. Any licences initiated or activated in error will still be charged to You; and
 - 6.18.8 for the avoidance of doubt, if the You utilise the applicable Third-Party Services in excess of any cap, You shall pay to Us the Fees and other expenses in accordance with Your actual use.

7. Change control

- 7.1 If either Party wishes to change the scope of the IT Supplies, it shall submit details of the requested change to the other in writing.
- 7.2 If either Party requests a change to the scope or execution of the IT Supplies, We shall, within a reasonable time, provide a written estimate to You of:
 - 7.2.1 the likely time required to implement the change;
 - 7.2.2 any variations to Our Fees arising from the change;
 - 7.2.3 the likely effect of the change on the Project Timetable; and
 - 7.2.4 any other impact of the change on the terms of these Conditions and/or the Statement of Works/Order.
- 7.3 If We request a change to the scope of the IT Supplies, You shall not unreasonably withhold or delay consent to it.
- 7.4 If You wish Us to proceed with the change, We have no obligation to do so unless and until the Parties have agreed in writing on the necessary variations to Our Fees, the Project Timetable and any other relevant terms of these Conditions and/or the Statement of Works/Order to take account of the change.
- 7.5 You shall be responsible for paying additional fees for providing You with an estimate in accordance with Clause 7.2 unless the change in question has been requested by Us.

8. Contract governance

- 8.1 Where applicable, the Parties will implement and follow the Contract Governance Arrangements.
- 8.2 Without affecting the generality of Clause 8.1, each Party will ensure that the individuals identified in the Contract Governance Arrangements attend the meetings and otherwise perform the functions set out there. We may also require You to ensure that one or more of Your senior representative(s) attends any of those meetings, in any case where We consider that the issues to be discussed at that meeting justify that.

9. Intellectual Property Rights

- 9.1 All Intellectual Property Rights existing prior to the Commencement Date shall vest in their originator absolutely.
- 9.2 You grant Us for the Term a non-exclusive, worldwide, royalty free licence to use Your Intellectual Property Rights in any pre-existing material that vests in You pursuant to Clause 9.1 (including without limitation Your Input Data) to the extent required by Us to provide the IT Supplies and to fulfil Our other obligations under these Conditions or the Statement of Works or Order.
- 9.3 Subject to Clauses 9.1 and 9.2 above and 9.4 below, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by Us. We hereby licence all such rights to You on a non-exclusive, non-transferable, worldwide basis to such extent as is necessary to enable You to make reasonable use of the Deliverables and the IT Supplies as is envisaged by the Parties. If We lawfully terminate a Statement of Works/ or Order under Clauses 15 this licence will automatically terminate.
- 9.4 You may not, at any time including after termination of these Conditions or the applicable Statement of Work, share any of Our Intellectual Property Rights with any third party without Our prior written consent.
- 9.5 You shall pay and indemnify Us, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Us, arising by reason of claims that (i) Our possession of or use of the Your Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (ii) Your or any of Your customer's, modify, alter, replace combine with any other data, code, documents or other software, which alters Our Intellectual Property Rights and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise, or determination.
- 9.6 If an Intellectual Property Rights claim is brought or in Our reasonable opinion is likely to be made or brought, We may at Our own expense ensure that the You are still able to use the Deliverables by either:
- 9.6.1 modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the You, such acceptance not to be unreasonably withheld; or
 - 9.6.2 procuring a licence or permission to use the Deliverables on terms which are acceptable to You, such acceptance not to be unreasonably withheld.
- 9.7 We shall have no obligation or liability for an Intellectual Property Right infringement claim to the extent such claim arises from:
- 9.7.1 any use by or on behalf of You of the combination with any item not supplied or recommended by the Us where such use of the Deliverables directly gives rise to the claim, demand, or action; or
 - 9.7.2 any modification carried out on behalf of You to any item supplied by Us under these Conditions if such modification is not authorised by Us in writing where such modification directly gives rise to a claim, demands or action.
- 9.8 If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 9.5 or 9.7, the Indemnified Party shall:
- 9.8.1 notify the Indemnifying Party in writing of any Intellectual Property Rights infringement Claim ("**IPR Claim**") against it in respect of which it wishes to rely on the indemnity at Clause 9.5 or Clause 9.7 (as applicable);
 - 9.8.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle

- the IPR Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- 9.8.3 provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- 9.8.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 9.9 Where We have agreed to provide You with third party software as part of the IT Supplies, the terms upon which such software is provided are set out in Section C of these Conditions.

10. Limitation of liability

- 10.1 You acknowledge and agree that, except as expressly provided in these Conditions or unless it is set out as IT Supplies under a relevant Statement of Work, You assume sole responsibility for:
- 10.1.1 all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to Your or Your agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities, including the internet and acknowledges that the IT Supplies and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
- 10.1.2 loss or damage arising from or relating to any Relief Event.
- 10.2 The following provisions set out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents, and sub-contractors) to You in respect of:
- 10.2.1 any breach of these Conditions or any Statement of Works or any Order/s;
- 10.2.2 any use made by You of the IT Supplies, the Deliverables, or any part of them; and
- 10.2.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with these Conditions or the Statement of Works or Order.
- 10.3 We will provide the IT Supplies to You using reasonable care and skill and any Deliverables will conform substantially to the requirements of the Statement of Works or Order. Without prejudice to Clause 36 if it should be applicable, all other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded by these Conditions.
- 10.4 Nothing in Clause 10 excludes Our liability:
- 10.4.1 for death or personal injury caused by Our negligence;
- 10.4.2 for fraud or fraudulent misrepresentation; or
- 10.4.3 any other liability which cannot lawfully be excluded or limited.

10.5 Subject to Clause 10.4:

10.5.1 We shall not in any circumstances be liable, for any losses or damages which fall within the following categories:

10.5.1.1 loss of profits;

10.5.1.2 loss of business;

10.5.1.3 depletion of goodwill, reputation, or similar losses;

10.5.1.4 loss of anticipated savings;

10.5.1.5 loss of use;

10.5.1.6 loss of, damage to or corruption of data or information;

10.4.1.8 any loss arising as a result of any defect in Software and/or Hardware; or

10.4.1.9 any special, indirect, consequential, costs, damages, charges, or expenses; and

10.6 subject to Clause 10.4 and 10.5, Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of Our obligations under these Conditions or the Statement of Works/Order (including any applicable conditions) shall be limited to the value of the Fees (excluding any Third Party fees paid for Third Party Services) paid by You during the 12 months preceding the date on which the claim arose (unless any other amounts are agreed in writing in the Statement of Works/Order).

10.7 We expressly exclude:

10.7.1 any warranty to You that any Third-Party Services supplied or licensed under these Conditions or the applicable Statement of Work will operate substantially in accordance with, and perform, the material functions and features as set out in the marketing, sales, or other associated documentations; and

10.7.2 any and all liability in relation to the use of such Third-Party Services.

11. Insurance

We will take out and maintain with a reputable insurer the insurance policies in respect of Our potential liabilities under or in relation to the Statement of Works or any Order.

12. Confidentiality

12.1 Each Party will in respect of any Confidential Information of which it is the Recipient:

12.1.1 use that Confidential Information only if and to the extent necessary for the purposes of performing its obligations and/or exercising its rights under these Conditions and the Statement of Works or Order;

12.1.2 not disclose that Confidential Information to any person other than:

- 12.1.2.1 any person employed or engaged by it (including, in Our case, any of Our subcontractors); (ii) its auditors and other professional advisers, in each case if and to the extent that such disclosure is necessary for the purposes in Clause 12.1.1 ("**Permitted Disclosees**"); or
 - 12.1.2.2 any other person having a statutory, regulatory or other legal right (other than a contractual right) to request and receive that information, including any court of competent jurisdiction, provided that the Recipient informs the Discloser prior to such disclosure that it has been required to make it (if and to the extent that the Recipient is legally permitted to so inform the Discloser); and
- 12.1.3 otherwise use its reasonable endeavours to protect and maintain the confidentiality of that Confidential Information.
- 12.2 Clause 12.1 will not apply to any information which:
 - 12.2.1 is or becomes public knowledge other than as a result of a breach of this Clause 12;
 - 12.2.2 was lawfully in the Recipient's possession before its disclosure to the Recipient under or in connection with these Conditions;
 - 12.2.3 following its disclosure to the Recipient under or in connection with these Conditions, is received by the Recipient from a third party who is not under an obligation of confidentiality in relation to that information; or
 - 12.2.4 was independently developed by the Recipient without use of or reference to the Confidential Information.
- 12.3 Each Party will ensure compliance by its Permitted Disclosees with the confidentiality obligations imposed on it by this Clause.
- 12.4 Each Party agrees that damages may not be an adequate remedy for any breach of this Clause and that the other Party will be entitled to seek a court order to enforce compliance with this Clause or to stop any breach of it, actual or threatened.
- 12.5 The provisions of this Clause 12 are subject to the provisions of Clause 13 in so far as they apply to any Confidential Information which is personal data.

13. Data protection

Within these Conditions the terms "controller", "data subject", "personal data", "personal data breach", "process ("processed" to be construed accordingly) and "processor" shall have the same meanings as in the Data Protection Legislation.

- 13.1 With respect to either Parties' rights and obligations under these Conditions, the Parties acknowledge that in relation to Your Data, You are a controller and We are a processor.
- 13.2 The Parties acknowledge their respective obligations under the Data Protection Legislation and shall give each other such assistance as is reasonable to enable each other to comply with such obligations. However, for the

avoidance of doubt, You agree that where We have satisfied a contractual obligation under these Conditions or Statement of Works/Order, then such satisfaction of the contractual obligation is deemed to satisfy the same or similar requirement under the Data Protection Legislation.

13.2.2 You warrant, represent, and undertake to Us that You have lawful grounds for the processing of Your Data.

13.2.1 The Parties confirm that where applicable the following information has been provided in the relevant Statement of Works/Order: subject matter and duration of the processing; the nature and purpose of the processing; the type of personal data; the categories of data subjects; Your obligations and rights.

13.3 Where We process Your Data under or in connection with these Conditions, We shall:

13.3.1 save as required otherwise by law, only process Your Data as is necessary to perform our obligations under any Statement of Works/Order, and only in accordance with Your documented instructions.

13.3.2 put in place appropriate technical and organisational measures to meet Our obligations under the Data Protection Legislation;

13.3.3 ensure Our staff who will have access to Your Data are subject to appropriate confidentiality obligations;

13.3.4 be entitled to engage sub-processors to process Your Data subject to Us ensuring that equivalent requirements to those set out in this Conditions are imposed on any sub-processor(s), Us remaining fully liable to You for the performance of the sub-processor's obligations and where applicable, providing You reasonable prior notice of any addition, removal or replacement of any such sub-processors;

13.3.5 not process or transfer Your Data outside the UK and European Economic Area without Your prior documented consent (which consent is hereby given in respect of the processing of data by those third parties described where applicable in the relevant Statement of Works/Order). For the avoidance of doubt, any consent given under this clause includes the consent to transfer Your Data to the United Kingdom;

13.3.6 have in place the appropriate technical and organisational security measures to protect Your Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure, or access;

13.3.7 notify You without undue delay after becoming aware of any personal data breach involving Your Data, taking into account the nature of processing and the information available to Us. You confirm that you have had opportunity to review Our breach notification policy, systems and guidance and concluded that they are suitable and adequate for the nature of the processing under any Statement of Works/Order or other agreement;

13.3.8 where applicable take appropriate technical and organisational measures, insofar as is reasonably possible, to assist You in responding to requests for data subjects for access to or rectification, erasure or portability of Your Data or for restriction of processing or objections to processing of Your Data (but We will not respond to any such data subject request except on written instructions from You). Furthermore, We will, upon Your request, provide assistance relating to Your security; impact assessment; data breach reporting requirements; and data protection or data privacy authority consultation obligations under the Data Protection Legislation taking into account the information available to Us. We may charge You reasonable costs (or the rates otherwise agreed between the parties) for time spent and expenses incurred in providing co-operation and assistance as required by this clause;

13.3.9 make available to You such information reasonably requested and which We are reasonably able to provide, and permit and contribute to such reasonable audits, including inspections, conducted by You (or Your appointed auditors), as is necessary to demonstrate compliance with the Data Protection Legislation. You will give reasonable notice of any audit; the audit is required to take place during Our normal business hours and will be

fully liable for any associated costs;

13.3.10 (save as may be required by law) retain Your Data for an agreed period upon expiry or termination of any Statement of Works/Order or other agreement under these Conditions, and at Your cost and option either delete or return Your Data on expiry or termination of any Statement of Works/Order or other agreement under these Conditions, provided always that nothing in this clause 13 shall oblige Us to provide assistance which does not relate directly to any IT Supplies performed pursuant to any agreed Statement of Works/Order or agreement under these Conditions.

13.4 We shall inform You in writing if, in Our opinion, an instruction from You infringes the Data Protection Legislation but only in relation to a breach of General Data Protection Regulation ((EU 2016/679)). However, You acknowledge that:

(a) any information We provide is not legal advice or guidance in anyway whatsoever, and that We make no warranty or representation regarding the information (express or implied); and

(b) this clause shall not relieve You of Your obligation to ensure that all instructions to Us comply with all applicable legislation, including all Data Protection Legislation; and

(c) We may charge reasonable costs (or the rates otherwise agreed between the parties) for Our time spent and expenses incurred in providing the You with co-operation and assistance as required by this clause.

13.5 Notwithstanding anything to the contrary, if any of the following occur:

(a) any changes/modifications to the Data Protection Legislation (including in connection with the withdrawal of the United Kingdom from the European Union and/or the EEA) including the requirement to amend, update, modify or replace any systems used to process the Your Data;

(b) any new, clarified or amended guidance or policies issued by a supervisory authority;

(c) any direction or instruction issued by a supervisory authority (whether relating to You or Us in respect of the IT Supplies (including any processing of the Your Data);

then any increased effort or costs incurred by Us in association with the aforementioned shall be additionally chargeable to You.

13.6 You shall indemnify and keep indemnified, subject to the general Limit of Liability in Clause 10, Us against any liability, fines, claims, demands, expenses and costs (including legal fees) arising as a result of: any breach of Data Protection Legislation by You, or Us acting in accordance with any instruction, policy or procedure on Your behalf.

13.7 You warrant and represent that any instruction, policy, or procedure shall be lawful.

14. COMPLIANCE WITH LEGISLATION

14.1 The Parties shall:

14.1.1 comply with all applicable law, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

14.1.2 not engage in any activity, practice, or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice, or conduct had been carried out in the UK;

14.1.3 have and shall maintain in place throughout the term of these Conditions and Statement of Work or Order its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Act, the Relevant Policies and Clause 14.1.2 and will enforce them where appropriate;

14.1.4 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the Statement of Works/Order;

14.1.5 immediately notify the other Party (in writing) if a foreign public official becomes an officer or employee for it or acquires a direct or indirect interest in it (and warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Statement of Works/Order); and

14.1.6 shall when requested certify to the other Party in writing, signed by an authorized officer, compliance with this Clause 14. You shall provide such supporting evidence of compliance as may reasonably request.

14.2 Breach of this Clause 14 shall be deemed a material breach of these Conditions and shall entitle either Party to terminate this Agreement forthwith on written notice under Clause 15 of these Conditions.

14.3 For the purpose of this Clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 14 a person associated with a Party includes but is not limited to any subcontractor.

15. Termination

15.1 These Conditions shall commence on the date of the initial Statement of Work or Order entered into by the Parties under these Conditions shall remain in force until the expiry or termination of all Statements of Work and/or Orders entered into pursuant to these Conditions.

15.2 Each Statement of Works or Order shall commence on the Commencement Date and shall remain in full force for the Term unless otherwise specified in the Statement of Work or earlier terminated in accordance with the provisions of these Conditions, the Statement of Work or Order, as the case may be. Thereafter, the Statement of Work or Order shall continue to automatically renew for a subsequent term equivalent to the Term ("**Subsequent Term**"), unless a Party gives written notice to the other Party, not later than ninety (90) days before the end of the Term or the relevant Subsequent Term, to terminate the Statement of Work or Order (as the case may be).

15.3 Where any of the IT Supplies is subject to a User License, We shall be entitled to suspend or terminate the relevant IT Supplies immediately effective upon notice, for a violation of the User License by You, and You agree to defend, indemnify and hold Us harmless from any losses, damages, costs, liabilities or expenses resulting from any third party claim or allegation arising out of, or relating to, use of the relevant IT Supplies, which is as a result of Your violation of the User Licence.

15.4 Either Party may, by written notice to the other, terminate the affected Statement of Works or Order if a Force Majeure Event occurs which prevents either Party from performing its obligations in respect of all or a substantial part of the Conditions, Statement of Work or Order for a continuous period of more than 15 days.

15.5 The applicable Statement of Works or Order may be terminated by either Party (the "**Terminating Party**") immediately by giving written notice to the other Party if:

15.5.1 the other Party commits a material breach of any material term of these Conditions, the Statement of Work or Order and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so;

- 15.5.2 the other Party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or, being a company or a limited liability partnership, is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or, being a natural person, is deemed either to be unable to pay its debts or to have no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing applies;
- 15.5.3 the other Party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation of the other Party with one or more other companies or the solvent reconstruction of the other Party);
- 15.5.4 a moratorium is declared in respect of any indebtedness of the other Party;
- 15.5.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other Party (other than for the sole purpose of a scheme for a solvent amalgamation of the other Party with one or more other companies or the solvent reconstruction of the other Party);
- 15.5.6 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other Party;
- 15.5.7 an administrative receiver, a receiver or a compulsory manager is appointed over the assets of the other Party or a person becomes entitled to make any such appointment;
- 15.5.8 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration, or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen days;
- 15.5.9 any event occurs, or step is taken in respect of the other Party in any jurisdiction to which it is subject which event or step is equivalent or similar to those set out in this Clause 15.5;
- 15.5.10 the other Party ceases (or threatens to cease) for any reason to carry on all or a substantial part of its business or takes or suffers any similar action which in the opinion of the Terminating Party means that the other Party may be unable to pay its debts.

16. Consequences of expiry or termination

- 16.1 The expiry or termination of a Statement of Works/Order (for any reason) will not affect:
 - 16.1.1 other Statements of Works or Orders;
 - 16.1.2 any rights or obligations of either Party that have accrued prior to such expiry or termination; or
 - 16.1.3 any provision of the Statement of Works/Order which is expressly or by implication intended to come into or to continue in force on or after such expiry or termination.
- 16.2 Subject to Clause 16.3, upon the expiry or termination of the Statement of Works/Order:
 - 16.2.1 We shall cease provision of the IT Supplies;
 - 16.2.2 each Party will promptly, and in any event within ten Business Days of such expiry or termination,

deliver up to the other Party or destroy (at the absolute discretion of the other Party) any and all copies of Confidential Information (other than copies of these Conditions or any of its terms) of which it is the Recipient then in its (or any of its Permitted Disclosees') possession or control and, if requested, provide the other Party with written confirmation, signed by a duly authorised officer, certifying that it has complied with its obligations under this Clause 16.2. The obligation to destroy any Confidential Information pursuant to this Clause 16.2 includes an obligation to permanently delete from any information technology system any copies of that Confidential Information held there in electronic form;

- 16.2.3 you shall pay any and all invoices and sums due and payable up to and including the date of termination, including any remaining amounts owing up to the end of the Term or Subsequent Term and any termination fees that We incur from any Third Party as a consequence of such early termination. We shall use Our reasonable endeavours to mitigate any loss but You acknowledge and agree that any such fees may not be able to be mitigated by Us and You shall not hold Us responsible if You incur full terminations fees;
- 16.2.4 all licences granted under the Statement of Work/Order will terminate immediately except for fully paid, fixed term and perpetual licences. Notwithstanding the termination of any User Licences, You remain responsible for all applicable licence fees;
- 16.2.5 for metered products billed periodically based on usage, You must immediately pay for unpaid usage as of the termination date; and
- 16.2.6 each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials, and other items (and all copies of them) ("**Materials**") belonging to the other Party.

- 16.3 Clause 16.2 does not prohibit a Party (or its Permitted Disclosee) from retaining a copy of any Confidential Information if and to the extent that and for so long as that Party (or its Permitted Disclosee) is legally obliged to do so (other than in terms of any contractual obligation on its part) or that Party (or its Permitted Disclosee) reasonably requires to do so for internal audit and legal risk management purposes.

17. Assignment and sub-contracting

- 17.1 You may not assign, novate or otherwise transfer or sub-contract or otherwise deal in any of Your rights and/or obligations under the Statement of Works or Order, whether in whole or in part, without Our prior written consent, such consent not to be unreasonably withheld or delayed.
- 17.2 We may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of its rights or obligations under these Conditions and/or the Statement of Works or Order.

18. Force majeure

A Party that is subject to a Force Majeure Event will not be in breach of these Conditions and/or the Statement of Works/Order or liable for any failure or delay in the performance of any obligations under these Conditions and/or the Statement of Works/Order to the extent that such failure or delay is attributable to the Force Majeure Event.

19. Notices

- 19.1 Where any notice is to be given under the Statement of Works or Order, it must be in English and in writing, signed by a duly authorised signatory of the Party giving it. Notices must be:
 - 19.1.1 delivered personally or by commercial courier or sent by first class post or recorded delivery, to the address and marked for the attention of the individual specified in the notices provisions of the Statement of Works or Order, or to any other address and marked for the attention of any other individual that either Party may nominate in writing for these purposes from time to time; or

19.1.2 sent by email to the addressee specified in the Statement of Works or Order, or such other email recipient as either Party may nominate in writing for these purposes from time to time, and provided that within twenty four hours of sending it, the email notice is also delivered or posted to the Party concerned in accordance with Clause 19.1.1.

19.2 Any notice given in accordance with Clause 19.1 will be treated as having been received:

19.2.1 at the time of delivery, if delivered personally;

19.2.2 at the time of signature by the recipient of the courier's receipt, if delivered by commercial courier;

19.2.3 at 0900 hours on the second Working Day following the date of posting the notice, if sent by post; and

19.2.4 at the time of transmission, if delivered by email.

However, where in any case, these rules would result in a notice being treated as having been received on a day which is not a Business Day, or after 1700 hours on a day which is a Business Day, it will be treated as having been received at 0900 hours on the next Business Day afterwards.

19.3 To prove the giving of a notice it will be sufficient to show it was sent in accordance with Clause 19.1.

19.4 The provisions of this Clause do not apply to the service of any process in any legal action or proceedings which may be served in any manner competent under applicable law.

20. Severability

20.1 If any provision of these Conditions and/or the Statement of Works/ or Order is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable, or illegal, the other provisions shall remain in force.

20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable, or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

21. Waiver

21.1 No failure to exercise or delay in exercising a right or remedy under a Statement of Works or Order or otherwise in law will constitute grounds from which to infer that the Party so delaying or failing has waived or elected to abandon that right or remedy in respect of any circumstances or events, past, present and/or future.

21.2 No single or partial exercise of any right or remedy under any Statement of Works or Order or in law will preclude or restrict the further exercise of that right or remedy.

22. Variations

No variation of these Conditions, the Statement of Work or Order shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

23. Exclusive Remedies

The remedies set out in these Conditions and the relevant Statement of Works or Order/s are Your sole and exclusive remedies.

24. Disputes

- 24.1 If a dispute arises out of or in connection with these Conditions and/or a Statement of Works/Order, or the performance, validity, or enforceability of either of them (**Dispute**) then the Parties shall follow the procedure set out in this clause:
- 24.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, both parties shall appoint a designated representative who has sufficient authority to settle the Dispute and who is at an equivalent or higher management level than the person with direct responsibility for the administration of the Statement of Work to attempt in good faith to resolve the Dispute;
 - 24.1.2 if the above are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, both Parties shall refer the Dispute to a more senior designated representative who shall also attempt in good faith to resolve it; and
 - 24.1.3 if the above are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Dispute shall be referred for determination as follows:
 - 24.1.3.1 if the dispute is of a technical nature which is related to the provision of the IT Supplies, to an expert (an "**Expert**"), who will act as expert and not as arbitrator, in accordance with Clause 24.2 to Clause 24.5; or
 - 24.1.3.2 in all other cases, mediation, and/or arbitration in accordance with Clause 24.6 and Clause 24.8.
- 24.2 The Expert will be selected and appointed by agreement of the Parties. If the Parties fail to appoint the Expert within 10 Business Days, the Expert will be chosen and appointed on the instructions of either Party using CEDR Solve who shall appoint an Expert who is suitably qualified and experienced to determine the issue in dispute.
- 24.3 The Expert will be instructed to deliver his or her decision to the Parties in writing within 30 days or such other period as may be agreed in writing of the date on which his or her appointment takes effect.
- 24.4 Each Party will fully comply with any instructions issued by the Expert in accordance with the terms of his or her appointment and otherwise co-operate with the Expert, including by providing him or her with any information in its possession which he or she requests for the purposes of considering the issue in dispute and reaching his or her decision.
- 24.5 Each Party will bear its own costs in relation to the reference to the Expert. The fees and costs of the Expert will be borne by the Parties in whatever proportion he or she decides having regard (amongst other things) to the conduct of the Parties.
- 24.6 If Clause 24.1.3.2 applies and/or the Parties cannot agree that the Dispute is of a technical nature, the Parties shall first seek settlement of the Dispute by mediation in accordance with the LCIA Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.

- 24.7 If the Dispute is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, then either Party may proceed with any other available remedy.
- 24.8 The provisions of this Clause 24 do not prevent either Party from applying for an interim court order whilst the Parties attempt to resolve a dispute in accordance with this clause.

25. No joint venture, partnership, or agency

A Statement of Works or Order does not and is not intended to create a partnership or joint venture between the Parties to it, nor authorise either Party to act as agent for the other. Except to the extent otherwise agreed expressly in a Statement of Works or Order or otherwise in Writing, neither Party will have authority to act in the name of or on behalf of or otherwise to bind the other Party in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power), nor will they purport to so act or to so bind the other Party.

26. Counterparts

A Statement of Works or Order may be entered into in any number of counterparts and by the Parties on separate counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts together shall together constitute the one agreement.

27. Entire agreement

- 27.1 These Conditions, the Statement of Works or Order and any other documents that may be referred to in it or annexed to it, constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any prior arrangement, understanding or agreement between them in relation thereto.
- 27.2 Each of the Parties acknowledges and agrees that in entering into these Conditions, the Statement of Works or Order and the documents referred to in it or annexed to it, it does not rely on the statement, representation (whether innocent or negligent), assurance or warranty (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in these Conditions, Statement of Works or Order or those documents annexed thereto.
- 27.2 These Conditions and the Statement of Works or Order are made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by anyone else.

28. Law

- 28.1 These Conditions, the Statement of Works or Order and any dispute or claim arising out of or in connection with them or their subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.
- 28.2 Subject to Clause 24, the Parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions, the Statement of Works or Order or its or their subject matter or formation (including without limitation non-contractual disputes or claims).

SECTION C – SOFTWARE AND HARDWARE SUPPLY TERMS

29. Application of Section C

- 29.1 The terms of this Section C of these Conditions apply to and are deemed incorporated within all Statement of Works or any Order where within the IT Supplies there is a reference to Software and/or Hardware being included, to the exclusion of any terms and conditions or other contractual terms or arrangements proposed by You.
- 29.2 Unless any provision in this Section provides otherwise, the terms of this Section shall apply to the re-sale of all Hardware and Software by Us.

30. Definitions

In addition to the defined terms contained within Section A Clause 1, the expressions which follow are given these meanings unless the context in which they are used requires another meaning.

"Hardware" means the hardware products to be provided by Us to You under the Statement of Works or set forth in any Order;

"Media" means the media upon which Software is recorded and any documentation produced by Us which is associated with Software specified in the Statement of Works or Order;

"Software" means any Third-Party software products to be provided by Us to You under the Statement of Works or Order;

31. Software User Licences, Intellectual Property and Representations

- 31.1 Subject to the payment of the Fees by You and acceptance by You of the terms of the relevant User Licences, We shall procure the delivery of the Software for, and provide the Media to, You.
- 31.2 It is a condition of these Conditions that You shall accept the relevant User Licence issued by the Third Party where You must directly contract with them. In the event that You do not enter into or accept the terms of such User Licences (whether directly contracted with Us or the relevant licensor), then We reserve the right to suspend the provision of the IT Supplies (including the applicable Software, Media and/or Hardware) until such time as You accept such User Licence.
- 31.3 We do not own any Intellectual Property Rights in the Software and We do not grant You any rights to use the Software. You acknowledge that User Licences are granted by the licensors of the Software direct to You and You confirm that You will use the Software on and subject to their User Licence or any other terms relating to the third party's services being provided.
- 31.4 You acknowledge that We are not authorised to make and have not made any representations regarding the Software to You, and You have not entered into the Statement of Works or confirmed any Order in reliance of any representations regarding the Software.
- 31.5 The Statement of Works or Order covers the supply of the Software by Us to You. Unless the description of the IT Supplies expressly provides otherwise, We do not advise or recommend the purchase of any software by You and assume no duties under contract or otherwise in relation to Your choice of Software. You further acknowledge that You are responsible for ensuring that the Your hardware, and operating software for such hardware is compatible

with the Media and/or Software and We give no warranty in relation thereto.

- 31.6 You assume sole responsibility for results obtained from the use of any Software and for conclusions drawn from such use. We shall have no liability for any inaccuracies, errors and/or omissions in any information, instructions or other outputs provided in connection with such Software or any actions taken by Us at Your direction.

32. Use of Software

- 32.1 You undertake:
- 32.1.1 not to use the Software until You have accepted the terms of the relevant User Licence;
 - 32.1.2 to notify Us of any material breaches of User Licences without delay;
 - 32.1.3 not to copy the Software (other than in accordance with the terms of a User Licence);
 - 32.1.4 not to disassemble, decompile or reverse engineer the Software except in accordance with the terms of the User Licence, the Statement of Works/Order or as permitted by applicable law;
 - 32.1.5 not to translate, modify, create derivative works from, adapt, enhance, or extend the Software (other than in accordance with the terms of a User Licence);
 - 32.1.6 not to lease, rent, loan, distribute, sub-lease, transfer, or sub-license the Software (other than in accordance with the terms of a User Licence);
 - 32.1.7 to supervise and control use of Software to ensure compliance with the terms of User Licences and the Statement of Works/Order;
 - 32.1.8 to ensure that Your employees and agents are notified of the restrictions contained in this Section and the terms of User Licences prior to such employee or agent using the Software; and
 - 32.1.9 not to use the Software to provide any bureau, application service or facilities management service or use the Software to process the data of any third party.

33. Payment

- 33.1 We reserve the right to have User Licences revoked and withdraw IT Supplies if payment is not received for the Software and/or Hardware within 30 days of Our Invoice date (or in accordance with any other payment terms which are agreed between the Parties).
- 33.2 Title to Media and/or Hardware shall not pass until full payment of the relevant Fees and all other monies due from You to Us have been paid.
- 33.3 Until title to any Media and/or Hardware has passed to You, You shall:
- 33.3.1 store the Media and/or Hardware separately so that they remain readily identifiable as Our property;
 - 33.3.2 not remove, deface, or obscure any identifying mark or packaging on or relating to the Media and/or Hardware;
 - 33.3.3 maintain the Media and/or Hardware in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 33.3.4 notify Us immediately if You become subject to any of the events listed in Clause 16.2(b) or 16.2(c) of the Agreement; and

- 33.3.5 give Us such information relating to the Media and/or Hardware as We may require from time to time.
- 33.4 We may recover the Media and/or Hardware in which title has not passed to You. You irrevocably licence to Us, our officers, employees and agents, to enter any premises of Yours (including vehicles), in order to satisfy Ourselves that the You are complying with the obligations on You, and/or to recover any Media and/or Hardware in which title has not passed to the You.
- 33.5 In addition to the Fees (and unless the parties agree otherwise) You shall pay any delivery charges associated with the delivery of Media and/or Hardware to Us and/or to You.
- 33.6 Save to the extent that they are inconsistent with the terms of this Clause 33, the terms of Clause 6 apply to the Fees which relate to Software and/or Hardware.

34. Delivery

- 34.1 Where applicable, We agree to deliver Media and/or Hardware to You. Any delivery times provided by Us to You are estimates only and time of delivery of Media and/or Hardware shall not be of the essence.
- 34.2 We may deliver Media and/or Hardware in instalments.
- 34.3 Risk in Media and/or Hardware shall pass on delivery.
- 34.4 You shall be responsible (at the Your own cost) for preparing the delivery location for the delivery of the Hardware and for the provision of all necessary access and facilities reasonably required to deliver and install the Hardware. If We are prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, We may levy additional charges to recover Our loss arising from this event.

35. Returns/Cancellation

As a reseller of Software and Hardware, We are subject to the return and cancellation policies of the relevant supplier of the Software and Hardware. We shall provide reasonable efforts to assist You in cancelling and/or returning the Software and/or Hardware in accordance with the relevant return and/or cancellation policies of the supplier applicable to the Software and/or Hardware.

36. Warranty

- 36.1 We warrant that Media will be of satisfactory quality on delivery but otherwise all warranties and conditions that may apply to the Software are excluded to the fullest extent permitted by law.
- 36.2 In the event of any breach of Clause 36.1 by Us, Our sole obligation and Your sole remedy shall be to replace such deficient Media provided that this remedy will only be available to You where such deficiency has been directly caused by Us and is notified to Us within 7 days of the date of delivery.
- 36.3 You acknowledge that We do not manufacture the Hardware, We therefore, exclude all warranties, conditions, and implied terms to the fullest extent possible in relation to such Hardware.
- 36.4 Hardware/Software supplied may be subject to its own individual warranty with its Manufacturer. We will use reasonable endeavours to either;

- 36.4.1 obtain for You the benefit of any standard end-user warranties in respect of the Hardware/Software

(whether by assignment from Us or directly from the Manufacturer); or

36.4.2

36.4.3 grant You the same warranties that We receive from the Manufacturer in respect of the Media subject to the conditions and limitations relating to those warranties contained in contractual documents between the Manufacturer and Us.

37. Export Control

Without prejudice to the generality of Clause 31.3, You acknowledge and undertake that the Software may be the subject of governmental controls on its use or resale and that You will observe the provisions of applicable law and User Licences relating to such controls.

38. Indemnity

You will indemnify Us against all losses, claims, demands, expenses, and liabilities of any nature which We may sustain or suffer arising from a breach by You of your obligations under this Section C.

SECTION D – ONLINE PURCHASING PORTAL TERMS

39. Application of Section D

The terms of this Section D of these Conditions apply to and are deemed incorporated within all Statement of Works or any Order where Our Purchasing Portal is being utilised by You as part of the IT Supplies. These terms apply to the exclusion of any terms and conditions or other contractual terms or arrangements proposed by You.

40. Definitions

In addition to the defined terms contained within Section A Clause 1 and otherwise throughout these Conditions, the expressions which follow are given these meanings unless otherwise defined.

“**Portal**” means the Trustmarque Purchasing Portal or Trustmarque’s Cloud Enterprise Services Portal where applicable.

41. Terms of Use

- 41.1 By using Our Portal you confirm Your acceptance of these Conditions and Our Section D – Online Purchasing Terms.
- 41.2 In using Our Portal, You confirm that you are an authorised representative of Your organisation and You accept these Conditions on its behalf and that You agree to comply with them. If You (or those authorised to use Our Portal on your behalf) do not agree to these Conditions, You must not use Our Portal.
- 41.3 You are permitted to browse the Portal and place Orders on the Portal. No reproduction of any part of the Portal may be sold or distributed for commercial gain, nor shall it be modified or incorporated in any other work, publication, or site. No other licence or right is granted.
- 41.4 We do not guarantee that the Portal, or any content on the Portal will be available uninterrupted. We may suspend or withdraw or restrict availability of all or part of the Portal for business and operational reasons. Where reasonably possible we will try to provide reasonable notice to You of any suspension or withdrawal.

42. Service Description(s)

- 42.1 We reserve the right to make any updates, amendments, or reasonable changes from time to time to reflect changes to our products, users' needs, and Our business priorities. Where possible we will try to provide reasonable notice of any major change.
- 42.2 The information on the Portal has been included in good faith but is for general informational purposes only. It should not be relied on for any specific purpose. We do not warrant that the descriptions of goods/services or other content listed on the Portals is accurate, complete, reliable, current, or error-free.
- 42.3 We may provide links to other sites over which We have no control. We are not responsible for the availability of such external sites or resources and do not endorse and are not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources.

43. Pricing & Availability

- 43.1 We cannot confirm the price or availability of an item until after your Order is placed. Pricing or availability errors may occur on the Portal or through any of our suppliers, partners, and vendors. The receipt of an Order confirmation by You does not constitute Our acceptance of an Order or Our confirmation of an offer to sell a product.
- 43.2 We reserve the right to cancel any Orders containing pricing or availability errors, with no further obligations to You, even after your receipt of an Order confirmation or shipping notice from Us. We may, at our discretion, either contact You for instructions or cancel Your order and notify You of such cancellation.
- 43.3 Any online purchasing pricing that is published is subject to variation on final confirmation of pricing with Our network of suppliers, partners, and vendors.

44. General

- 44.1 You shall be responsible for ensuring the security and confidentiality of all log-on identifiers, including usernames and passwords, assigned to, or created by, You. You acknowledge and agree that You will be solely responsible for all activities that occur under such ID. You shall promptly notify Us upon becoming aware of any unauthorised access to or use of the Portal and provide all reasonable assistance to Us to bring an end to such unauthorised access or use.
- 44.2 You shall be responsible for all access to and use of the Portal by Your users. You shall ensure that Your users are aware of these Conditions. You shall only provide users with access to the Portal via the access method provided by Us.
- 44.3 The Portal is for users in the United Kingdom only, we do not warrant or represent that the content available on the Portal is appropriate for users in other locations.

SECTION E – CLOUD SOLUTION PROVIDER TERMS

45. Application of Section E

The terms of this Section E of these Conditions apply to and are deemed incorporated within all Statements of Work or any Order where We agree to any Order or subsequent or renewal Order for Microsoft Products, Non-Microsoft Products, and any Trustmarque Related Services. It is your responsibility to ensure that you have read through all the terms and conditions set

out in this Section E, including any terms that have been referenced herein. If you are unable to access any of the documents referenced, please contact us at eserveshelp@trustmarque.com for a copy.

46. Definitions

In addition to the defined terms contained within Section A Clause 1 and otherwise throughout the Conditions, the expressions which follow are given these meanings unless otherwise defined.

“Additional Terms” means the additional terms, which an Order may be subject to, and will be presented and agreed at the time of placing an Order. This excludes any Microsoft Customer Agreement and/or any Non- Microsoft Product terms and conditions.

“Billing Date” means the day of the month You will be billed on, for Your Subscription(s). We will advise you of your Billing Date upon placement of Your first Order.

“Consumption Based Subscription” means monthly subscriptions that are billed based on actual usage in the preceding month without upfront commitment.

“Customer Data” is defined in the Online Services Terms.

“Customer Solution” is defined in the Online Services Terms.

“Early Termination Charge” means Microsoft’s discretion charge for early termination of a Subscription before its term ends.

“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution.

“Fixed Term Subscription” means a subscription to use software for a fixed duration.

“Microsoft” means Microsoft Ireland Operations Limited.

“Microsoft Customer Agreement” means the Microsoft customer agreement, which is a direct agreement between You and Microsoft, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time any such updates shall continue to form part of the Microsoft Customer Agreement.

“Microsoft Product(s)” means any Online Service (including any Software).

“Microsoft SLAs” means the commitments Microsoft make regarding delivery and/or performance of an Online Service, as published at <https://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentType Id=37> or at an alternate site that Microsoft identify.

“Non-Microsoft Product” means any third party-branded software, data, service, website, or product but excluding Microsoft Product.

“Order” means an order for Microsoft Product and/or Non-Microsoft Product via Us as reseller, which also may include the Product and Subscription Management Services and Reactive Support Services. The process for placing an Order is described in  [Trustmarque Managed Services Catalogue.pdf](#)

“Online Services” means any of the Microsoft-hosted online services subscribed to by You under this agreement, including Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

“Online Services Terms” means the Microsoft terms that apply to Your use of the Microsoft Products available at <https://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentType Id=46> The Online Services Terms include terms governing your use of Microsoft Products that are in addition to the terms in this agreement.

“Portal” means the Trustmarque Enterprise Services Portal, or an alternate site identified by Us. The Portal will be the preferred place for updates on pricing, terms and conditions and any other information relating to these Conditions.

“Product and Subscription Management Services” means the assistance provided by Us to enable the purchase, activation, and management of Microsoft Products by You. These may be provided by the Portal or through other processes or tools. As further described in the applicable Order.

“Reactive Support Services” means the services provided by Us to assist You with issues relating to Microsoft Products. As further described in the applicable Order.

“Software” means software Microsoft provide for installation on Your device as part of your Subscription or to use with the Online Service to enable certain functionality.

“Subscription” means an enrolment for Online Services for a defined Term as established by Us, which is either a Fixed Term Subscription or a Consumption Based Subscription.

“Term” means the duration of a Subscription (e.g., 30 days or 12 months).

“Trustmarque Related Services” means the Product and Subscription Management Services, Reactive Support Services and Advisory Services provided by us.

1. Resale of Microsoft Cloud Solutions

1.1 Subject to your compliance and acceptance of the Microsoft Customer Agreement , we shall make available to You Microsoft Products that have been agreed with Microsoft and quoted for by Us, or Microsoft Products that are available on a current price list, which can be requested from Us at any time.

1.2 Any Non-Microsoft Products provisioned through Microsoft are subject to the Microsoft Customer Agreement and any additional terms the proprietor wishes to apply. Any Non- Microsoft Products purchased by You from Us that have not been provisioned through Microsoft are subject to the proprietor’s standard terms and conditions, in the absence of the proprietor’s terms and conditions these Conditions apply.

1.3 In the event that You purchase Microsoft Azure and use CloudCheckr Services, You agree to the CloudCheckr End User Licence Agreement; <https://cloudcheckr.com/end-user- license-agreement>.

2. Microsoft Customer Agreement

2.1 The Microsoft Customer Agreement is between You and Microsoft and consists of Microsoft general terms. The Microsoft Customer Agreement applies to every Order placed for Microsoft Products and must be signed and returned to us before you can place any Orders for Microsoft Products. Microsoft may at its discretion accept or reject any proposed Customer.

2.2 You acknowledge and agree to the terms of the Microsoft Customer Agreement and that it is a valid, binding and enforceable agreement between You and Microsoft and that You are liable for and shall indemnify Us against any loss or damage incurred as a result of Your failure to comply with the terms of the Microsoft Customer Agreement. You further agree that it is Your responsibility to ensure that the Microsoft Customer Agreement is signed and returned to us, any failure to sign the Microsoft Customer Agreement may result in your being unable to purchase any Microsoft products/services.

3. Description of Product and/or Services

3.1 We do not make any warranties or representations regarding the Microsoft Products and/or Non-Microsoft Product. Any relevant warranties and representations (if any) are made by Microsoft to You in accordance with the Microsoft Customer Agreement and/or the proprietor of Non-Microsoft Products to You in accordance with their standard terms and conditions.

3.2 The Microsoft Customer Agreement supplements these Conditions in relation to the description of the services and products You may Order via Us as reseller of Microsoft Products. We shall therefore be entitled to rely on the terms of the Microsoft Customer Agreement, as they relate to the supply of the Microsoft Products by a reseller.

4. Microsoft Service Level Agreement

4.1 Microsoft makes certain service level commitments to You in the Microsoft SLAs. These are Microsoft's commitments to You and not Ours. If You make a claim on the Microsoft SLAs, We will escalate the claim to Microsoft for review. If Microsoft have approved and agreed to provide any credit to You following a review, We will credit you the amount following receipt of the same from Microsoft to Us, in the next invoice.

5. Fixed Term Subscription

5.1 Where You have requested a Fixed Term Subscription, unless otherwise specified on the Order, the term of the subscription will be for a period of 12 months from Your Billing Date and will automatically renew unless cancelled by You by giving no less than 90 days' prior written notice before the end of the 12 months. Automatic renewals are subject to any concerns We may have on Your financial standing and whether You pose or are likely to pose a credit risk.

5.2 A Fixed Term Subscription is pre-billed on a pro-rata basis on the applicable monthly Subscription price. 4.2 For the avoidance of doubt, We may increase any fees related to the Subscriptions in line with any increases imposed upon Us by Microsoft. Each renewal will be for the same number of months as the Term. Pricing for a renewal will be agreed in a quote supplied by us or if no quote is provided, Our pricing in a price list supplied to You that is in effect as of the date of the renewal.

5.3 If you decide to cancel your subscription before the fixed Term no refund of monies paid will be provided.

6. Consumption based Subscriptions

6.1 Where you have selected a Consumption Based Subscription you will be billed on the Billing Date based on actual usage in the preceding month with no upfront commitment. Payment is on a monthly basis in arrears.

6.2 Consumption Based Subscriptions do not expire unless cancelled. Consumption Based Subscriptions can be cancelled at any time by giving notice to Us of your intention to cancel the Consumption Based Subscription. Any usage before cancellation will be billed at the next scheduled Billing Date, as a final invoice for the relevant Subscription.

6.3 The pricing charged for Consumption Based Subscriptions will be based on the unit price as provided for by Microsoft during the current billing cycle and will be billed to You on a consumption basis during the Term of your Subscription.

6.4 Any reduction, increase or suspension of licences can take up to 60 days to take effect and show in the invoice.

6.5 Where You have chosen a Consumption Based Subscription with an upfront commitment and you consume more than the anticipated monthly committed amount We will:

6.5.1 notify You of Your actual usage as soon as reasonably practicable; and

6.5.2 invoice You in full for Your actual usage which shall be paid by You.

7. Payment terms

7.1 Pricing shall be as per the price list which sets out the unit cost exclusive of VAT, unless a price is separately agreed in an Order. Prices set out in the price list and/or Order may decrease or increase at any time.

7.2 In the event that your internal purchasing requirements require the issue and use of a valid purchase order, You shall promptly provide a valid purchase order equating to the total sum of the Subscription charge as agreed in the applicable Order for a period of 12 months (unless otherwise set out in the applicable Order). In the event that the total usage and the fees exceeds the initial purchase order, You shall issue a subsequent purchase order to cover the additional amount. You shall be responsible for the usage You consume on Your Subscription(s). A value of a purchase order shall not limit your liability to pay for all Subscription charges in relation to the agreed Subscriptions (including all actual usage).

7.3 We are not liable for any failure on Your part to provide an initial or subsequent purchase order. Any failure to provide the purchase order, which subsequently results in a delay to Us receiving payment, will allow Us to suspend or terminate the applicable Order and any orders in accordance with clause 8.1 a).

7.4 You may check Your usage limits of a Subscription at any time by submitting a service request or via the Portal if We make that functionality available for the Microsoft Products or Non-Microsoft Products. Any failure by Us to notify You of Your usage limits, as per any agreed notification process, shall not relieve You of Your liability to pay any charges in respect of Your Subscriptions that You have purchased.

8. Cancellation and/or Suspension

8.1 We may cancel and/or suspend the applicable Order in whole or in part.

- a) In accordance with the Conditions;
- b) In accordance with, or due to a breach of the Microsoft Customer Agreement.
- c) If Microsoft terminates pursuant to the Microsoft Customer Agreement;
- d) Where (acting reasonably) we consider you to be a credit risk
- e) Upon providing you 30 days' notice. We reserve the right to terminate the relevant Order(s) and the Customer's Subscription by providing the Customer on 30 days' notice.

8.2 Suspension or cancellation of an Order by us shall not relieve you of your liabilities under these Conditions and/or the Order and the Microsoft Customer Agreement. You shall be liable for any invoice which relates to the consumption of Microsoft Products up until the expiry of the termination notice.


8.3 Upon expiry, termination, or cancellation of the applicable Order for whatever reason, you shall pay in full all outstanding invoices within 10 days. You will have sixty (60) days to notify Us if You wish to migrate any Customer Data to either a new Subscription with Us, with Microsoft directly, or some other service. Upon request, and if within the timescale, we will assist You with migration of the Customer Data at an additional charge to be agreed between both Parties.

8.4 In addition to the above, Microsoft may terminate Your status as a customer at any time. We shall not be liable whatsoever to You following any termination or suspension of the Subscriptions for legal, regulatory or any other reason by Microsoft.

9. Trustmarque Related Services

9.1 Any charges for the Trustmarque Related Services will be included within the Subscription charges.

9.2 We will provide the Trustmarque Related Services using reasonable skill and care and in accordance with the Service Description and Service Level Agreement for Trustmarque Cloud Solutions document in all material respects.

9.3 Our performance is dependent upon Your prompt performance of any of Your obligations which include, among others, the responsibilities described in the service descriptions and service level agreements within  [Trustmarque Managed Services Catalogue.pdf](#). You agree to make available to Us an authorised representative who shall be authorised to make binding decisions on Your behalf with regards to Your Subscriptions.

10. Intellectual Property

10.1 Any title and all intellectual property rights in any document, material, idea, data, or other information constituting an original item developed and supplied by Us as part of the Trustmarque Related Services, shall remain vested in Us.

10.2 You acquire only such limited rights to use the Microsoft Products as is explicitly described in the Microsoft Customer Agreement and/or Online Services Terms. Any use by You of these rights beyond the scope permitted by the

Microsoft Customer Agreement and/or Online Services Terms shall constitute a material breach hereof.

11. Limitation of Liability

11.1 The terms set out in the Microsoft Customer Agreement and/or any Online Services Terms govern the rights, responsibilities and liability of You and Microsoft in relation to the use of the Microsoft Products. We exclude any and all liability in relation to the use of the Microsoft Products. Liability for all other services which fall outside the Microsoft Product and are directly provided by Us, are governed by Clause 9 of the Conditions.

11.2 You shall indemnify Us from and against any claims, including but not limited to claims for licence fees that directly or indirectly arise from Your use of the Subscriptions and/or Online Services or reporting.

11.3 New terms and conditions. Upon the renewal of your Subscription, or the placement of a further Order for additional Subscriptions you may be required to sign a new Order.