

**CLOUD SERVICES
STANDARD TERMS AND CONDITIONS**

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following terms and expressions have the following meanings:

'Acceptance Criteria' means any relevant criteria for the acceptance of any Developed Properties or Services, as may be specified in a Statement of Work;

'Agreement' means this Agreement, comprised of the Standard Terms and Conditions, the applicable Exhibits, the Schedules and any addendum(s) and/or Change Control Notice(s) (and as the context requires shall mean such provisions as are incorporated by reference into a Statement of Work);

'Business Days' means Monday to Friday (inclusive) in any week and including any day Monday to Friday that is a public holiday throughout England;

'Business hours' means 08:00 to 18:00 (GMT), Monday to Friday, excluding public holidays;

'Change Control Procedure' means the procedure referred to in Clause 15 of these Standard Terms and Conditions;

'Change Control Notice' or **'CCN'** means a confirmation sent by Supplier that a change has been made;

'Charges' means the charges calculated as set out in accordance with Clause 5 of these Standard Terms and Conditions;

'Charges' means the charges calculated as set out in Charges Schedule;

'Client' means the client entity set out on the Front Sheet, and as identified in a Statement of Work;

'Client Equipment' means a list of equipment owned by the Client (as detailed in the Statement of Work) that will be eligible for the Services provided under the applicable Statement of Work;

'Client Assets' means any of the Hardware or other infrastructure or materials owned or licensed by the Client, including the Client Equipment;

'Client Hardware' means the Hardware owned by or licensed to the Client and which is to form part of the Client Equipment as set out in a relevant Statement of Work;

'Client Personal Data' means Personal Data which is processed by Supplier in connection with the provision of Services which are the subject of this Agreement, which includes, for the avoidance of doubt, any Personal Data of Client's customers, where applicable;

'Client Specific Laws' means any law or regulation or binding requirement which is specific to the Client or to its business sector;

'Confidential Information' means certain private information belonging to (or licensed to) a party that may be confidential or proprietary in nature;

'CSO' means a CDW Customer Services Order Form which details the Services which are to be provided to the Customer and which has been executed by the parties;

'Customer' means the corporate entity named in a CSO and/or SOW which contracts directly with Supplier.

‘Developed Properties’ means any bespoke materials prepared by Supplier specifically and exclusively for the Client as part of the Services;

‘Disclosing Party’ means the Party disclosing Confidential Information;

‘Downtime’ means temporary cessation of access to the Services for essential maintenance and repair and may be either Emergency Downtime or Scheduled Downtime;

‘Effective Date’ means the date which is the earlier of (i) the date stated as the Service Commencement Date in the applicable SOW, (ii) the date the Services commence pursuant to an applicable SOW or CSO or (iii) the date that the last party signs the applicable SOW or CSO.

‘Emergency Downtime’ means immediate Downtime in the event of an emergency situation;

‘End of Life’ means any Client Equipment where the relevant Vendor no longer provides ongoing support, maintenance, spares or software updates;

‘Equipment’ means any equipment that the Supplier makes available to the Client (whether or not any charges are made for such supply) in connection with the provision of the Service;

‘Exhibit’ means each exhibit or schedule attached to the CSO which details the additional terms as will be applicable to specific types of Services to be provided by the Supplier to the Client including, where applicable, pursuant to a Statement of Work;

‘Flow Through Services’ means those third party services which the Supplier shall include as part of its overall service offering but which will be subject to the provisions of Clause 3.3;

‘Incident’ means any unplanned problem or event that causes or is likely to cause an interruption to or a reduction in, the normal operation of the Service or the Client Equipment;

‘Incident Management’ means the process used by the Supplier to diagnose, notify and resolve Incidents;

‘Intellectual Property Rights’ means all copyright and other intellectual property rights howsoever arising and in whatever media, whether or not registered or capable of registration, including patents, trade marks, service marks, trade names, domain names, design rights, database rights, any applications for the protection or registration of these rights and all rights in the nature of unfair competition rights or rights to sue for passing off and all renewals, revivals and extensions thereof throughout the world;

‘List of Servers’ means the list of Servers and/or Virtual Servers detailed in an applicable Statement of Work;

‘Marks’ shall mean trade marks, trade names, logos and other branding owned or used under valid licence by a Party;

‘Monitoring Services’ means technology used by the Supplier to provide notifications and information relating to the availability, capacity and performance of the Client Assets;

‘Priority’ or **‘Priority Level’** means the order in which Incidents are addressed according to the severity of the impact and urgency of the Incidents;

‘Receiving Party’ means the Party receiving Confidential Information;

‘Recovery Time Objective’ or **‘RTO’** means the time in which the Supplier takes to initiate a (i) Failover of a Client Virtual Server or (ii) a restore of a Client Backup, as applicable;

‘Relief Event’ means:

- a. any act or omission by the Client, its employees, agents or sub-contractors or other third party suppliers engaged by or on behalf of the Client in connection with or in relation to the subject matter of this Agreement;
- b. any breach by the Client of any of its obligations under any licence or maintenance agreement relating to the Client’s Software;
- c. a fault not caused by Supplier with any task the responsibility for which is the Client’s save to the extent caused by Supplier; or
- e. a fault with the Client’s Software which is the Client’s Responsibility as shown in the relevant Statement of Work;

in each case which impacts upon the Supplier's ability to comply with any of its obligations hereunder;

‘Request’ means any requirement from the Client for information or assistance not relating to an Incident, or any requirement to make a low risk or pre-defined change;

‘Reseller Terms’ means the terms applicable to any services or products which are resold to the Client by the Supplier, as per Clause 3.4;

‘Scheduled Downtime’ means essential downtime of the Services (or any part thereof) as notified to the Client in advance;

‘Server’ means any individual server listed in the List of Servers;

‘Service Commencement Date’ means the date the provision of the Services (or relevant parts of them) is due to commence, as stated in the relevant Statement of Work;

‘Service Delivery Manager’ means the main point of contact for each Party respectively, as set out in the Welcome Pack (if applicable) appointed on behalf of each Party to oversee the performance of this Agreement;

‘Service Description’ means the document, provided by the Supplier, containing the detailed description of the Service;

‘Service Desk’ means a single point of contact provided to the Client for communication with the Supplier;

‘Service Levels’ shall mean the service level responses and response times set out in the tables in each Exhibit, as shall be applied and managed in accordance with the Service Level Schedule of this Agreement;

‘Services’ means the services to be provided by the Supplier to the Client as set out in these Standard Terms and Conditions and each applicable Exhibit, and as shall be confirmed in any applicable Statement of Work;

‘Services Producer Price Index’ or ‘SPPI’ means the index measuring gross change in trading price for the computer programming industry published by or on behalf of HM Government in the UK, or if that index ceases to be published or the basis upon which such index is calculated is substantially changed or rebased, such substitute or alternative index most likely to achieve an equivalent result as the parties may agree in writing;

'ServiceWorks Data Centres' means a data centre environment provided by the Supplier to the Client for the purposes of the Services;

'ServiceWorks Video Services' means video conferencing facilities provided by Supplier;

'Software' means the items of computer software as may be listed in a Statement of Work;

'SOW Commencement Date' means the date when a particular Statement of Work is to commence, as stated in such Statement of Work;

'SOW Term' means the term (if any) applicable to an individual Statement of Work, as shall be stated in such Statement of Work;

'Standard Terms and Conditions' means the standard terms and conditions set out in this Agreement exclusive of the applicable Exhibits and Schedules;

'Statement of Work' (or **'SOW'**) means the signed engagement between Supplier and the Client in respect of a particular engagement, as shall then constitute a separate contract between the parties, incorporating by reference the terms of this Agreement (such that references herein to "this Agreement" shall, as the context requires, be taken to include these provisions as they are then incorporated into a Statement of Work);

'Supplier' means CDW Limited;

'Supplier Assets' means any of the Software, Hardware or any other materials owned by or licensed to Supplier and which are used by the Supplier to provide the Services in connection with this Agreement;

'Support Hours' has the meaning set out in the relevant Exhibit and/or Statement of Work;

'Target Fulfilment' means the timeframe within which the Supplier aims to complete any Service Request submitted and approved via the Ticket Logging Process;

'Target Resolution' means the timeframe within which the Supplier aims to resolve an Incident, or to implement a workaround to provide a temporary solution intended to mitigate or reduce the impact of an Incident;

'Term' means the term of this Agreement as set out in Clause 2 of these Standard Terms and Conditions;

'Third Party' means any individual or company involved in the support of the Client's IT operations other than the Client or the Supplier;

'Third Party' means any individual or company involved in supporting the Client's IT operations other than the Client or the Supplier;

'Ticket Logging Process' means the Supplier's mechanism for recording and tracking Incidents;

'UnContended' means where components have logically dedicated resources allocated to them;

'Vendor' means any company that manufactures hardware or software components that comprise a Client Equipment. The Vendor also provides ongoing software updates and technical escalation for any hardware or software faults;

'Virtual Server' means any individual virtual server listed in the List of Servers; and

- 1.2 Unless the context otherwise requires:
 - 1.2.1 the words “include” and “including” shall be construed without limitation; and
 - 1.2.2 any reference to an enactment of legislation includes any subordinate legislation made from time to time under it and is to be construed as references to that enactment as from time to time amended or modified or any enactment replacing it.
- 1.3 The headings in this Agreement are for ease of reference only and shall be disregarded in construing or interpreting the Agreement.
- 1.4 Where there are any inconsistencies or conflicts between the provisions set out in these Standard Terms and Conditions, the Schedules and the applicable Exhibit, the order of priority shall, unless stated otherwise, be: the (i) the Statement of Work; (ii) the Standard Terms and Conditions, (iii) the Schedules; and (iv) the applicable Exhibit.

2. **TERM**

- 2.1 This Agreement shall commence on the Effective Date and shall continue unless or until terminated by either Party in accordance with this Agreement.
- 2.2 Each Statement of Work shall commence on the SOW Commencement Date and shall continue for the SOW Term specified in the Statement of Work, unless otherwise terminated in accordance with the provisions of this Agreement. The Services to be provided under such Statements of Work shall commence on their relevant Services Commencement Dates.
- 2.2 Each CSO shall commence on the date that the last party has executed the CSO and shall continue for the duration specified in the CSO, unless otherwise terminated in accordance with the provisions of the CSO.

3. **THE SERVICES**

- 3.1 In consideration of the payment of the Charges, the Supplier shall supply the Services to the Client from the relevant Services Commencement Dates and for the duration of the relevant SOW Term (if applicable), in all material respects with the applicable Exhibits.
- 3.2 The Supplier is not responsible for providing, managing or maintaining any of the Client’s Software unless expressly shown as the Supplier’s responsibility in the applicable Statement of Work.
- 3.3 A Statement of Work may identify certain third party services which Supplier will provide on a flow-through basis ("**Flow Through Services**"). In respect of such Flow Through Services and notwithstanding anything in this Agreement to the contrary, the Supplier’s responsibilities and liability for such Flow Through Services shall be limited to the terms applicable to such Flow Through Services, as shall then be either set out in or cross referenced in the relevant Statement of Work.
- 3.4 Where a Statement of Work provides that the Supplier is acting as a reseller of any specified products or services, then the Client’s contract in respect of such products or services shall be with the original manufacturer or licensor of the relevant products or services, pursuant to the Reseller Terms (as shall be set out in or cross referenced in the relevant Statement of Work).

Supplier shall have no liability for the operation, condition, suitability or compliance of any products or services provided to Client pursuant to the Reseller Terms.

- 3.5 The Supplier does not warrant that the Services shall operate without interruption or error.
- 3.6 The Supplier shall use reasonable commercial endeavours to keep Downtime to a minimum.
- 3.7 If Emergency Downtime is required, the Supplier shall use reasonable commercial endeavours to notify the Client in advance of the same.
- 3.8 If Scheduled Downtime is required, the Supplier shall use reasonable commercial endeavours to notify the Client in writing at least 5 days in advance of the same.

4. SERVICE LEVELS

- 4.1 Each Party shall use all reasonable endeavours to comply with its obligations set out in the Service Level Schedule and any applicable Service Levels as may be set out in an Exhibit or Statement of Work.
- 4.2 The Client agrees and acknowledges that Service Credits shall be its sole and exclusive remedy in respect of any Service Failures.

5. CHARGES

- 5.1 In consideration of the provision of the Services by the Supplier, the Client shall pay the Charges in accordance with this Clause and payment provisions in the Charges Schedule.
- 5.2 Those Charges which are expressed to be "subject to SPPI Increase" shall increase on each anniversary of the Commencement Date by the same percentage as the percentage increase (if any) in the Services Producer Prices Index over the immediately preceding 12 month period.
- 5.3 Payment of sums due under this Agreement shall unless otherwise agreed in the Charges Schedule, be made within 30 days of date of an invoice from Supplier.
- 5.4 Without prejudice to any of its other rights, should the Client fail to make any payment when due, the Supplier shall be entitled to:
 - 5.4.1 suspend its obligations under the Agreement for so long as any payment due hereunder remains outstanding; and/or
 - 5.4.2 charge interest on the overdue amount at the statutory rate, and otherwise in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.5 All sums due under this Agreement are expressed exclusive of any taxes and expenses. The Client shall pay the Value Added Tax thereon at the rate and in the manner prescribed by law, from time to time.
- 5.6 All sums due under this Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than as required by law). The Client will gross up any payments to be made to the Supplier to account for any applicable withholding taxes.
- 5.7 The Supplier shall not be responsible for any travel, accommodation, software or hardware, telecommunications equipment, infrastructure, or other expenses required for the Client to use or access the Services.

5.8 Where the Supplier is acting as a reseller for a third party, the Charges may include elements which pertain to such third party services or products. In such circumstances, the Supplier acts as agent for the relevant third party in respect of the collection of such payments and remittance to the third party.

6. CONTRACT MANAGEMENT

6.1 Each Party shall appoint a Service Delivery Manager.

6.2 Each Party's Service Delivery Manager shall co-operate in good faith with the Service Delivery Manager of the other Party to ensure the good performance of this Agreement together with any specific responsibilities as set out in the applicable Exhibit and/or Statement of Work.

7. CLIENT'S RESPONSIBILITIES

7.1 The Client shall (and shall procure that its officers, employees, agents and third party contractors shall) comply with its responsibilities as set out in (a) the Customer Responsibilities Schedule; (b) an Exhibit; and/or (c) any Statement of Work.

7.2 The Supplier will be relieved from liability for any failure or delay on its part to perform as anticipated under this Agreement; if and to the extent caused by any Relay Event.

8. SUPPLIER'S RESPONSIBILITIES

8.1 The Supplier shall perform the Services:

8.1.1 with reasonable care and skill; and

8.1.2 in a timely and professional manner, using a sufficient number of competent personnel with appropriate skills, qualifications and experience.

8.2 Where applicable to the Services, the Supplier shall use all reasonable endeavours to perform the Services in accordance with the Service Levels.

9. INTELLECTUAL PROPERTY

9.1 All title to and Intellectual Property Rights in the Client Assets and related materials (and all partial or complete copies of the same in any media or form), and all modifications made to them, shall remain with and be owned by the Client or any applicable third party licensors.

9.2 All title to and all Intellectual Property Rights in the Supplier Assets and related materials (and all partial or complete copies of the same in any media or form), and all modifications made to them, shall remain with and be owned by Supplier or any applicable third party licensors.

9.3 Intellectual Property Rights in Developed Properties shall, on payment of all Charges due under the applicable Statement of Work and subject to any pre-existing third party rights, belong to and be assigned to the Client so far as such assignment is lawfully possible. The Supplier agrees to execute at the cost of the Client all documents and perform such acts as may be reasonably necessary to enable the Client to obtain its title to Intellectual Property Rights in such Developed Properties. The Client grants the Supplier a perpetual, worldwide and royalty free licence to use such Developed Properties (and to modify or adapt them) in the course of the Supplier's provision of Services to its other customers.

- 9.4 Nothing in this Clause 9 shall affect the ownership of Intellectual Property Rights of third parties. Where additional third party licence terms apply to any materials or software to be provided to the Customer, they shall be specified in the applicable Statement of Work (and the Customer shall then comply with them).
- 9.5 Subject to the terms and conditions of this Agreement, the Client hereby grants to the Supplier a non-exclusive, transferable, sub-licensable, irrevocable, perpetual, royalty-free paid-up licence to use, distribute, reproduce, make available, perform, translate, adapt, create derivative works from, copy and/or modify the Intellectual Property Rights referred to in Clause 9.1 and the Developed Properties for the purpose of operating its business.
- 9.6 Subject to the terms and conditions of this Agreement, the Supplier hereby grants to the Client a non-exclusive, non-transferable, royalty-free licence to use Supplier Assets during the Term of this Agreement, in the manner described and permitted under this Agreement and solely for the purpose of receiving the benefit of the Services and as necessary to use any Developed Properties.
- 9.7 Nothing in this Agreement or any Statement of Work will prevent either party from using know how or experience of generic application, where this would not involve disclosure of any of the other party's confidential information.

10. WARRANTIES

- 10.1 Each Party warrants that it has full power and authority to enter into this Agreement and to perform its obligations under it.
- 10.2 The Client warrants that:
- 10.2.1 the Client Assets shall not infringe any third party rights, including without limitation Intellectual Property Rights and rights of privacy;
 - 10.2.2 the Client Assets shall not contain anything that is, in Suppliers reasonable opinion, obscene, blasphemous, defamatory, promotes or incites terrorism or hatred based on religion, race or disability, or is illegal pursuant to any applicable laws or regulations;
 - 10.2.3 the Client Assets shall not contain any virus, worm, Trojan horse, adware, spyware or any other form of malicious content, code or software or similar technology or anything which may otherwise compromise Supplier's Properties or assets;
 - 10.2.4 the performance of its obligations under this Agreement shall not conflict with its obligations under any other agreement to which it is a party;
 - 10.2.5 no third party litigation or claim is underway, pending or threatened which may prevent it fulfilling its obligations under this Agreement;
 - 10.2.6 it shall comply and shall procure that its officers, employees, agents and sub-suppliers shall comply at all times with all applicable laws and regulations in respect of its receipt and usage of the Services, including but not limited to Privacy Laws;
 - 10.2.7 it shall allow Supplier and its representatives such access to its premises and records on such occasions and at such times as Supplier shall reasonably require in order to perform its obligations under this Agreement and permit to make copies of any relevant documentation for the purposes of the same;

10.2.8 it shall provide an environment which:

- a) complies with all current applicable health and safety laws and regulations;
- b) allows safe access and working of Supplier employees, agents and sub-contractors; and
- c) provides adequate service access space for use by delivery people, engineers, or others, whether directly employed by Supplier or not, who may require access to the Client's premises.

10.3 The Supplier warrants that:

10.3.1 the Supplier Assets shall not infringe any third party rights including without limitation Intellectual Property Rights and rights of privacy;

10.3.2 when accessing the Client's premises, for the purposes of providing the Services, it shall comply with applicable health and safety law and any additional health and safety policies of the Client, where Supplier is notified in advance in writing of the same by the Client;

10.3.3 the performance of its obligations under this Agreement shall not conflict with its obligations under any other agreement to which it is a party;

10.3.4 no third party litigation or claim is underway, pending or threatened which may prevent it fulfilling its obligations under this Agreement; and

10.3.5 it shall comply and shall procure that its officers, employees, agents and sub-suppliers shall comply at all times with all applicable laws and regulations in respect of its provision of its Services, including but not limited to Privacy Laws (provided always that the Client shall remain responsible for notifying the Supplier of any Client Specific Laws and any changes to them, and shall be responsible for any resulting costs incurred by the Supplier in relation thereto).

10.4 Except for the express warranties and conditions expressly contained or referred to in this Agreement, Supplier makes no other warranties or representations regarding the Services and all warranties, conditions and other terms express or implied statutory or otherwise in respect of compliance with descriptions, the satisfactory quality or the fitness for purpose of the Services which are not expressly set out in this Agreement or a particular Statement of Work are excluded to the fullest extent permitted by law.

11. INDEMNITY

11.1 The Client shall defend, indemnify and hold harmless the Supplier, its affiliates and their directors, owners, officers, agents, employees, successors and assigns, from any damages or agreed settlement sums paid in respect of all and any third party claims asserted arising out of the (i) wilful misconduct of the Client, its employees, agents or contractors in the performance of its obligations under this Agreement, or (ii) any infringement of third party intellectual property rights arising from the Customer Assets.

11.2 The Supplier shall defend, indemnify and hold harmless the Client, its affiliates and their directors, owners, officers, agents, employees, successors and assigns, from any damages or agreed settlement sums paid in respect of all and any third party claims, demands, suits, proceedings, causes of action, costs, losses, damages, expenses (including reasonable legal expenses and fees)

or liabilities incurred or asserted arising out of (i) the Supplier's wilful misconduct (or of its employees, agents or contractors), or (ii) any infringement of third party intellectual property rights arising from the Supplier Assets.

11.3 If any matter which may give rise to a claim under this Clause 11 comes to the notice of the indemnified party, the indemnified party shall:

11.3.1 immediately give notice in writing of the claim in detail to indemnifying party;

11.3.2 not make any admission of liability, agreement, compromise or settlement, or take any other action in relation to such claim without the prior written consent of indemnifying party;

11.3.3 give the indemnifying party and its professional advisors access to any relevant data, documentation or other information in the indemnifying party's possession and allow the indemnifying party to make copies of the same; and

11.3.4 co-operate with the indemnifying party and take such action as the indemnifying party may require to dispute, resist, compromise or defend a claim or otherwise mitigate its liability in respect of an indemnified claim.

12. LIMITATION OF LIABILITY

12.1 NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY, FRAUDULENT MISREPRESENTATION, LIABILITY ARISING UNDER CLAUSE 11, ANY INDEMNITY IN THE EMPLOYEE SCHEDULE, OR ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED BY APPLICABLE LAW, NOR THE CUSTOMER'S LIABILITY TO PAY FOR ANY CHARGES AS MAY HAVE BECOME DUE HEREUNDER.

12.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF ANTICIPATED SAVINGS OF ANY KIND ARISING UNDER OR IN RELATION TO THE CLIENT'S USE OF THE SERVICES OR THE SUPPLIER ASSETS NOR FOR ANY LOSS OF PROFITS, BUSINESS, CONTRACTS, REVENUE, GOODWILL OR REPUTATION, OR ANY LOSS OR CORRUPTION OF DATA, OR ANY INDIRECT CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL LOSS OR DAMAGE WHATSOEVER, WHETHER OR NOT SUCH LOSS OR DAMAGE ARISES DIRECTLY OR INDIRECTLY AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT INCLUDING NEGLIGENCE OR ANY OTHER LEGAL THEORY, AND EVEN IF EITHER PARTY WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

12.3 SAVE IN RESPECT OF CLAUSE 12.1 AND 12.2 ABOVE, THE TOTAL AGGREGATE LIABILITY OF THE SUPPLIER UNDER EACH STATEMENT OF WORK ENTERED INTO PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL CHARGES (EXCLUDING TAXES AND PASS THROUGH COSTS AND EXPENSES) PAID BY THE CLIENT TO THE SUPPLIER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST CAUSE OF ACTION ARISING UNDER THE RELEVANT STATEMENT OF WORK UNDER WHICH THE LIABILITIES ARISE.

12.4 The Supplier shall not in any event be liable for any delay or default on its part to the extent that this has been caused by a Relief Event, and shall be entitled to be compensated by the Client for any reasonable additional costs and expenses it incurs as a result of such Relief Events.

12.5 Both parties shall in all circumstances act reasonably to seek to mitigate any losses or damages they may incur arising out of or in connection with this Agreement.

13. DEFAULT AND TERMINATION

- 13.1 A Party may terminate a Statement of Work immediately upon written notice to the other Party in the event of a material breach of the other Party which is not capable of remedy or which, if capable of remedy, is not remedied within thirty (30) days after service by the Party not in default of a written notice on the other Party, specifying details of the breach and the steps deemed necessary to remedy the same.
- 13.2 The Supplier may terminate a Statement of Work if the Client:
- 13.2.1 fails to meet its payment obligations as they fall due in accordance with Clause 5 of this Agreement;
 - 13.2.2 ceases carrying on business in the normal course or threatens to do so;
 - 13.2.3 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
 - 13.2.4 has a trustee, receiver, administrative receiver or other similar officer appointed in respect of all or any part of its business or assets or a petition filed or resolution passed or an order made for or in connection with the winding up of the Client.
- 13.3 Where the Supplier is entitled to terminate a Statement of Work in accordance with Clause 13.1 or 13.2 above, it shall be entitled to do any one or more of the following (without prejudice to any other right or remedy Supplier may have, and whether or not the Supplier does in fact exercise its right of termination):
- 13.3.1 require payment in cleared funds in advance of further provision of Services;
 - 13.3.2 suspend any further deliveries of goods or Services under such Statement of Work;
 - 13.3.3 demand immediate payment of other monies due from the Client to Supplier under this Agreement; and/or
 - 13.3.4 charge interest on monies outstanding from the Client to Supplier in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment is received after as well as before judgment.
- 13.4 Upon termination for any reason: (i) the Client shall immediately cease to access the affected Services or use any and all parts of the Supplier Assets relevant to the terminated Statement of Work and promptly return such Supplier Assets that are in its possession or control acknowledging that if the Client fails to do so, the Supplier may enter the Client's premises and take possession of the Supplier Assets; and (ii) all rights granted to Client in respect of the terminated Statement of Work shall cease to exist.
- 13.5 In the event of any termination of this Agreement or a Statement of Work, both parties shall comply with their respective obligations in the Termination Assistance Schedule.

14. SURVIVAL

- 14.1 Any provision which is either expressly or by implication intended to survive the expiry or termination of this Agreement (or a relevant Statement of Work) shall then survive any expiration, rescission or termination of this Agreement or a Statement of Work for any reason.

15. CHANGE CONTROL PROCEDURE

15.1 Any change or variation to this Agreement sought by the Client or enacted by the Supplier, including but not limited to; a change to the Services; the Servers; and/or the Virtual Servers shall be in accordance with the Change Control Procedure set out in the Governance Schedule.

16. PUBLICITY

16.1 Any and all press releases and other public announcements and publicity relating to the existence of or terms of this Agreement or the related commercial relationship of the parties must be agreed and approved in advance by the other party in writing (such agreement not to be unreasonably withheld or delayed). The Supplier shall however be entitled to include the Customer in generic client listings and capability/experience material.

16.2 In the event that the Parties shall agree to publicise their commercial relationship under Clause 16.1, each Party grants to the other the right to use its Marks solely for the purpose of marketing and promoting the commercial relationship or any part thereof. Any and all goodwill associated with the Marks shall automatically vest in the owner of the same.

17. DATA PROTECTION

17.1 Each Party shall comply with their respective obligations as set out in the Data Protection Schedule.

18. CONFIDENTIALITY

18.1 Each Party acknowledges that during the performance of this Agreement it shall have access to Confidential Information.

18.2 Confidential Information shall include any and all information disclosed by a Disclosing Party to the other Receiving Party in connection with this Agreement that is valuable owing to its confidential nature, and that is subject to reasonable efforts by the Disclosing Party to maintain its secrecy, including, but not limited to: Developed Properties, technical, engineering, scientific, financial, commercial and business information, including the terms of this Agreement, data of a Party or its Clients, systems, software, designs, inventions, know how, ideas, studies, hypotheses, results, samples, illustrations, plans, charts, graphs, photographs, reports, letters, specifications, manuals, tables, formulae, methods, operating and testing techniques, Client lists, pricing information, technical solutions, business or marketing strategies or plans, trade secrets, or other terms, methodologies, and other sensitive information of the Disclosing Party.

18.3 Confidential Information shall not include:

18.3.1 information already known to or independently developed by the Receiving Party with no reference to Confidential Information;

18.3.2 information which is or becomes known to the public through no fault, action or omission of the Receiving Party;

18.3.3 information lawfully received from a third party under no confidentiality obligation with respect to the Confidential Information; or

18.3.4 information which is required by law or order of a competent judicial authority to be revealed, provided that the Receiving Party provides the Disclosing Party with immediate

written notice of any such required disclosure in order to allow the Disclosing Party the opportunity to take legal or other action to prevent such disclosure.

- 18.4 The Receiving Party shall employ industry-standard security measures to protect the Confidential Information. The Receiving Party shall not disclose directly or indirectly any Confidential Information to third parties except to its officers, directors, agents, sub-contractors, affiliates and assignees on a need-to-know basis, provided such parties have executed appropriate written agreements sufficient to enable it to comply with its confidentiality obligations under this Clause 18.

19. NOTICES

- 19.1 Any notice or other communication to be given or served in connection with this Agreement shall be in writing and be delivered either by hand, or sent by pre-paid post, whether by ordinary first class post, special delivery post or recorded delivery post, at the Party's address and marked for the attention of the Party's Service Delivery Manager.
- 19.2 A notice or other communication is deemed to be given or served:
- 19.2.1 if delivered by hand, at the time it is delivered to the address; or
- 19.2.2 if sent by pre-paid post, whether ordinary first class post, special delivery or recorded delivery, on the second Business Day after posting.
- 19.3 Any notice or other communication in connection with this Agreement shall not be validly given or served if sent by any form of electronic communication, including but not limited to facsimile and e-mail.

20. FORCE MAJEURE

- 20.1 Save in relation to the Client's obligations to make payment under this Agreement, neither Party shall be deemed in breach of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed, interrupted or prevented by an event beyond its reasonable control, including an act of God, fire, earthquake, flood, natural disaster, act of government, change in law, war, riot or civil unrest, terrorism, and/or third party provider outages, provided that such party gives the other Party immediate written notice of the same and takes all reasonable steps to mitigate the effects of the same. In the event that the delay, interruption or failure to perform its obligations owing to an event as set out under this continues for a period of 30 days, the Party affected by the other's delay or inability to perform may elect to terminate this Agreement for convenience, at no charge and receive a refund of any Charges paid in advance of such termination.

21. GENERAL

- 21.1 The Parties are independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture, fiduciary, agency, representative, or affiliate relationship between the Parties.
- 21.2 Each Party is responsible for the supervision, management and direction of its own employees. Each Party is responsible for any compensation payments to its employees and for any injuries suffered by them in the course of their employment and neither party shall be responsible for the supervision, management and direction of the employees of the other party.

- 21.3 Termination of this Agreement or any Statement of Work shall not affect rights and obligations which have accrued at the time of termination.
- 21.4 This Agreement and each Statement of Work entered into pursuant to its terms is personal to the Client and it may not be assigned in whole or in part without the prior written consent of Supplier. Any purported assignment in breach of this Clause 21.4 shall be void and constitute a material breach of contract. This Agreement and each Statement of Work entered into pursuant to its terms shall inure to the benefit of and be binding upon the Parties, their successors and assigns and legal representatives.
- 21.5 The Supplier may perform all or any of its obligations under this Agreement or any Statement of Work through its group companies, affiliates, agents or contractors as it sees fit and in its sole discretion.
- 21.6 The failure of either party to insist upon strict performance of any provision of this Agreement or Statement of Work, or the failure of either party to exercise any right or remedy to which it is entitled under this Agreement or a Statement of Work, or otherwise, with respect to any breach or failure by the other Party shall not constitute or be considered a waiver of any breach of contract or of any such right or remedy.
- 21.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement or any Statement of Work so as to give a person who is not a party to this Agreement or the relevant Statement of Work any beneficiary right under it.
- 21.8 This Agreement sets out the entire agreement between Supplier and the Client with respect to its subject matter and supersedes any previous agreements, whether oral or in writing, between the Parties in relation to that subject matter. Each Statement of Work then incorporates by reference the terms of this Agreement and then in turn represents the entire agreement between the parties in respect of the subject matter of such Statement of Work.
- 21.9 No purported variation of this Agreement or any Statement of Work shall be effective unless made in writing and signed by each Party.
- 21.10 Each of Supplier and the Client waive any entitlement to a claim in relation to a representation which is not made or confirmed in writing signed by the Service Delivery Manager or a director or other authorised officer of the other Party save in the case of fraudulent concealment or fraudulent misrepresentation.
- 21.11 If any provision of this Agreement or a Statement of Work is held by a court, other judicial body or competent authority to be invalid, illegal or unenforceable for any reason the remaining provisions shall continue in full force and effect and the Parties shall use best endeavours, if necessary, to substitute the invalid or unenforceable provision with an appropriate provision which is valid and enforceable and which gives effect to the intention of the substituted provision as closely as possible.
- 21.12 During the term of their involvement with the performance of the Services and for 12 months thereafter the Client shall not without the consent of Supplier employ or attempt to employ any employee or former employee of Supplier to perform computer maintenance, information technology or computer related services (otherwise than through Supplier pursuant to this Agreement or any agreement in continuation or substitution of it) if that employee or former employee has had a direct involvement with the Client in relation to this Agreement or any Statement of Work entered into hereunder.

- 21.13 This Agreement and each SOW (separately) may be executed by electronic means, and may be executed in one or more counterparts, each deemed an original.
- 21.14 The construction, validity and performance of this Agreement and each SOW shall be governed by the laws of England and, subject to the provisions of the Governance Schedule, the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales over any claim, matter or dispute arising under or in connection with this Agreement and any SOW or the legal relationships established under it.

GOVERNANCE SCHEDULE

1. CHANGE CONTROL

- 1.1 Each Party acknowledges that an agreement of this nature inevitably requires timely, active and positive co-operation between the Parties to cater for technological and business changes and each Party agrees to act reasonably and co-operate in good faith with each other in that regard.
- 1.2 Each Party shall not unreasonably withhold its agreement to any change requested by the other Party.
- 1.3 Should either Party wish to propose a change, its Service Delivery Manager shall submit to the other Party's Service Delivery Manager a written request for such change addressing, as a minimum, the following points:
 - 1.3.1 the title of the proposed change;
 - 1.3.2 the reason for the proposed change;
 - 1.3.3 details of the proposed change; and
 - 1.3.4 any other applicable information.
- 1.4 If the proposed change is agreed, the Supplier shall send a CCN to the Client indicating that such change has been made and such a CCN shall constitute an amendment to the Agreement.
- 1.5 Until such time as a CCN has sent by Supplier, Supplier shall, unless otherwise expressly agreed in writing, continue to supply the Services in accordance with this Agreement.
- 1.6 Any discussions, negotiations or other communications which may take place between the Client and Supplier in connection with any proposed change, including but not limited to the submission of any written communications, prior to the delivery by Supplier of the CCN, shall be without prejudice to the rights of either Party.
- 1.7 Without prejudice to the generality of the foregoing Supplier shall ensure that any proposed alteration to the Charges set out in a CCN directly reflects a reasonable estimate of any increase and/or decrease in the cost to Supplier of delivering the Services in the event the CCN is accepted.
- 1.8 Each Party shall bear its own costs in relation to the preparation, negotiation and acceptance as applicable of a change to this Agreement.

2. GOVERNANCE

- 2.1 The points of contact for each party shall be specified in the relevant Statement of Work, which shall also specify any additional reporting and meeting requirements.
- 2.2 Each party's service manager named in the Statement of Works shall have initial responsibility for resolving any disputes that may arise. Should they be unable to do so, the parties agree to promptly escalate the dispute to their respective senior management. If the dispute remains unresolved, then the parties shall in good faith consider the use of mediation. If mediation is not agreed or is attempted but is unsuccessful in fully resolving the dispute, the dispute shall be determined by means of referral to binding arbitration, as shall be arranged by agreement between the parties or, in the absence of such agreement, determined by the Centre for Effective

Dispute Resolution. ("**CEDR**") Both parties shall however retain the right to seek appropriate injunctive relief via the courts system, if and as necessary to protect their rights.

CHARGES SCHEDULE

1. Each Statement of Work and CSO will specify the charges which are applicable which shall then be payable:
 - 1.1 in accordance with any payment profile as may be specified in the relevant Statement of Works or CSO; and
 - 1.2 in accordance with the provisions of Clause 5 of this Agreement.

SERVICE LEVELS SCHEDULE

1. This Service Levels Schedule applies wherever an Exhibit and/or a Statement of Work provides for Service Levels to be applicable to the Services to be provided to the Customer.
 - 1.1 For the purposes of this schedule, '**Fault**' means an issue with a Server and/or a Virtual Server (but not any operating system and/or software operating on any Virtual Server, unless agreed by the Parties) included on the List of Servers that causes, or may cause, an interruption to, or a reduction in, the quality or performance of a Server and/or a Virtual Server or any software running on that Server and/or Virtual Server, the resolution of which is Supplier's responsibility, in accordance with the terms of this Agreement and a "**Service Failure**" means a failure by the Supplier to comply with a Service Level (other than by reason of any act or omission by the Customer or any event beyond the reasonable control of the Supplier);
 - 1.2 In accordance with the provisions of this Schedule , the Supplier shall use reasonable commercial endeavours to:
 - 1.2.1 provide a logical, single point of contact for all such requests;
 - 1.2.2 respond to and resolve each request for support as soon as reasonably practicable and in any event in accordance with the time period applicable to the severity level thereof as set out in the relevant Exhibit or Statement of Work;
 - 1.2.3 where possible, diagnose and resolve all incidents and requests remotely;
 - 1.2.4 proactively manage the resolution of all incidents and requests;
 - 1.2.5 provide timely and accurate information to the Client regarding the likely resolution time; and
 - 1.2.6 not close any incident or request until Supplier has obtained confirmation from the Client that the incident or request has been resolved in a satisfactory manner. Notwithstanding the above, the Supplier will close any incident or request should the Client fail to provide such confirmation after three (3) attempts by the Supplier.
 - 1.3 Fault resolution is measured from the time at which the Fault is logged with Supplier by the Client or detected by Supplier's own monitoring activities, until the time at which the relevant Fault is resolved by the Supplier.
 - 1.4 The Supplier shall also be responsible for promptly investigating failures to meet service levels by initiating problem investigation to identify root causes of failures related to not achieving service levels.
 - 1.5 Having identified the root cause of any problem, the Supplier and the Client shall, to the extent that they or their respective agents, sub-contractors or Sub-Supplier's are commercially responsible for the problem, use reasonable endeavours to minimise or eliminate the recurrence of that problem.

- 1.6 In accordance with the agreed Service Levels in all material respects, the Supplier shall use reasonable commercial endeavours to:
 - 1.6.1 prior to performing any remedial action to any of the Services that hold Client data, to ensure that any documents or other data are safeguarded where practicable;
 - 1.6.2 if, after the performance of an attempted resolution, the Services does not perform in accordance with the Service Levels, replace, if applicable, the faulty Virtual Server or the relevant component part thereof as soon as reasonably practicable.
- 1.7 The Supplier shall monitor the performance of the underpinning infrastructure of the Services hosted on the ServiceWorks platform, located at the ServiceWorks Data Centres, on a continuous basis during the Support Hours.
- 1.8 The Supplier shall provide the Client with service reports as agreed between the Parties at an additional charge to the Client.
- 1.9 Where applicable to the Services being provided, Supplier shall be responsible for the following tasks as and when required and where the scope of the same is agreed between the Parties:
 - 1.9.1 incident management as related to the Services provided;
 - 1.9.2 major incident management where the issue is caused by a failure of the underpinning infrastructure;
 - 1.9.3 problem management as related to the Services provided; and
 - 1.9.4 change management as related to the Services provided.

2. **Service Credits**

Service Credits, where applicable, shall be as set out in the CSO or the Statement of Work.

DATA PROTECTION SCHEDULE

1. This Schedule shall apply to the extent Supplier collects, records, stores, or otherwise accesses (collectively, "**Process**," "**Processed**," or "**Processing**") information that can be used to directly or indirectly identify an individual in connection with the Services ("**Client Personal Data**"). Supplier shall only Process Client Personal Data in accordance with the instructions of Client as detailed in the Agreement and applicable data privacy law ("**Privacy Laws**"). Where applicable law requires Supplier to Process Client Personal Data under terms other than those of the Agreement, Supplier shall promptly notify Client of such legal requirement before Processing, unless applicable law prohibits such disclosure. Supplier shall also notify Client if Supplier determines any of Client's instructions infringes applicable Privacy Laws.
2. The Client acknowledges that Supplier is reliant on the Client for direction as to the extent to which Supplier is entitled to Process Client Personal Data. The Client represents and warrants that it is entitled to disclose and transfer Client Personal Data to Supplier and that Supplier may Process Client Personal Data based on the terms of the Agreement.
3. Supplier shall promptly notify Client of any request, complaint, claim, or other communication received by Supplier or a sub-contractor regarding its Processing of Client Personal Data. Supplier shall cooperate with and provide any necessary assistance to Client in responding to any such inquiries, in so far as possible and taking into account the nature of Supplier's Processing and Client Personal Data available to Supplier. Supplier shall be obliged to provide such assistance only in so far that the Client cannot respond to such request on its own. Notwithstanding anything to the contrary in the Agreement, Client is obliged to reimburse Supplier for out of pocket expenses in connection with such requests. Such expenses will be invoiced to Customer in accordance with the Agreement.
4. Upon request, Supplier shall provide reasonable cooperation and assistance to Client with its obligations under applicable Privacy Laws, including, where appropriate, data security, notification of security breach to supervisory authorities and data subjects, data subject rights requests, and conducting a data protection impact assessment, in so far as possible in connection with the Services, taking into account the nature of Supplier's processing and Client Personal Data available to Supplier. Supplier shall be obliged to provide such assistance only in so far that Client's obligations cannot be met by Client through other means. Notwithstanding anything to the contrary in the Agreement, Client is obliged to reimburse Supplier for its costs and expenses incurred in connection with such assistance. Such costs and expenses will be invoiced to Customer in accordance with the Agreement.
5. To the extent that Client Personal Data includes information about individuals who are located in the European Economic Area ("**EEA**") and/or Switzerland, and Supplier stores or otherwise obtains access to such Client Personal Data outside of the EEA and/or Switzerland, Supplier agrees it shall implement appropriate measures to address the cross-border transfer of Client Personal Data.
6. Supplier shall implement and maintain an information security program that includes appropriate technical and procedural safeguards to protect Client Personal Data, taking into account the nature of Supplier's Processing and Client Personal Data available to Supplier. Upon request, Supplier shall make available to Client information reasonably necessary to demonstrate compliance with this obligation.
7. The parties agree that Supplier may subcontract its obligations to sub-contractors as necessary to perform the Services under the Agreement. Supplier shall remain responsible for sub-contractors' performance

under the Agreement, and shall enter into an agreement with sub-contractors that imposes materially the same obligations as set forth in this Schedule. Supplier agrees that any sub-contractors who have access to Client Personal Data are bound to Process Client Personal Data in accordance with Supplier's instructions, and are subject to obligations to maintain confidentiality.

8. Notwithstanding anything to the contrary in the Agreement, Supplier shall promptly notify Client in the event Supplier discovers or is notified of a known breach of security leading to unauthorized disclosure of or access to Client Personal Data as a result of its Processing of Client Personal Data in violation of this Exhibit ("**Security Breach**"). Supplier shall reasonably cooperate in the investigation of the Security Breach.
9. The parties agree that upon thirty (30) days written notice to Supplier (unless a shorter period is required under applicable Privacy Laws), and no more than once per calendar year (unless required under applicable Privacy Law), Client may request reasonable access to Supplier's facilities, systems, and supporting documentation used to provide the Services, to the extent necessary to assess Supplier's compliance with its obligations under this Schedule. Such assessments shall be subject to Supplier's security and confidentiality policies, and shall be conducted in a manner that minimizes any disruption of Supplier's performance of services and other normal operations. Supplier shall be entitled to be compensated for its costs and expenses incurred in connection with any such audit or inspection activity, as will then be invoiced to Customer in accordance with the Agreement.
10. Upon termination of the Agreement or otherwise (and save as may be required by law), Supplier shall, at the choice of Client, either return or delete Client Personal Data from its systems. Supplier shall notify Client if there is a reason Supplier must maintain Client Personal Data past termination of the Agreement.

CUSTOMER RESPONSIBILITIES SCHEDULE

1. In addition to any specific responsibilities as may be stated in an Exhibit and/or a Statement of Work, the Customer shall:
 - 1.1 immediately notify the Supplier if it becomes aware of any unauthorised use of any of the Services or any other breach of the Client's network security policy that could affect the security of the Supplier's network or the Client's network;
 - 1.2 fully co-operate with the Supplier in all matters relating to the Services and provide Supplier with all necessary assistance and information, and full access to Client's site (if required) for the purposes of enabling the Supplier to provide the Services at no additional cost to Supplier;
 - 1.3 promptly inform the Supplier of all applicable health and safety rules and regulations and any other reasonable security requirements that apply at the Client's site;
 - 1.4 obtain and maintain all necessary licences and consents from third party suppliers in relation to its receipt of the Services, the Client Assets and the Client Software and ensure it fully complies with the provisions of any such licences and any other requirements of such third party suppliers;
 - 1.5 ensure that all personnel assigned by the Client to provide assistance to Supplier shall have the requisite skills, qualifications and experience to perform the tasks assigned to them; and
 - 1.6 not attempt to obtain access to, use or interfere with any programs or data of Supplier (without Supplier's prior written consent) or of any other client of Supplier.

EMPLOYEE SCHEDULE

"**Agency Workers Directive**" means Directive 2008/104/EC on temporary agency work;

"**Employee Claim**" means any action, cost (including reasonable legal fees and any disbursements), claim, demand, expense, protective award(s) or other liability in respect of which the Indemnifying Party may become liable to indemnify the Indemnified Party in accordance with the Charges Schedule (Employee Matters);

"**Employment Regulations**" means: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any Applicable Law of substantially similar effect providing for the automatic transfer of employees;

"**Employees**" means those individuals employed by the Client and assigned to the Services immediately prior to the commencement of the relevant Services;

"**Employment Liabilities**" means all payments, costs, expenses and outgoings in relation to an employee (including salaries, wages, holiday payments, national insurance contributions, pension contributions, bonus, tax and payments in respect of any other emoluments);

"**Replacement Supplier**" means any third party entity or part of the Client or the Client's corporate group which undertakes responsibility for the provision of services which are intended to replace the Services as provided by the Supplier under this Agreement and any Statement of Work

1. APPLICATION AND SCOPE

- 1.1 Subject to paragraph 1.2, the Parties agree that no employees are anticipated to transfer to the Supplier upon entry into the Agreement or a Statement of Work or to the Client (or any Replacement Supplier) upon termination or expiry of the Services under the Agreement or a Statement of Work (in whole or in part).
- 1.2 If the Parties agree, a Statement of Work may provide for the transfer of employees to the Supplier upon entry into the Agreement or a Statement of Work or to the Client (or any Replacement Supplier) upon termination of the Services under the Agreement (in whole or in part).

2. COMMENCEMENT

- 2.1 If, notwithstanding paragraph 1.1 and in the absence of a Statement of Work providing for the transfer of employees to the Supplier upon entry into the relevant Statement of Work, any Employees assert or claim or are found to have transferred to the Supplier upon the entry into the relevant Statement of Work or otherwise as a result of the provision of the Services as a result of application of any Applicable Law including the Employment Regulations, then:
 - 2.1.1 either party shall, upon becoming aware of such allegation or effect, notify the other promptly but in any event not more than seven (7) days of becoming aware;
 - 2.1.2 the Supplier shall give the Client the opportunity to offer employment to such Employee and such Employee the opportunity to accept that offer where the period of opportunity shall be not less than 28 days from either the date that the Supplier is notified by the Client of such allegation or effect or the date that the Client receives from the Supplier notification of such allegation or effect ("**the Opportunity Period**");

- 2.1.3 upon the expiry of the Opportunity Period, the Client shall immediately notify the Supplier whether the Employee has accepted the offer of employment with the Client or waived his right to claim transfer to the Supplier and provided such Employee has not accepted the offer of employment from the Client or waived his right to claim such transfer to the Supplier the Supplier may terminate the employment of such person with immediate effect; and
- 2.1.4 subject to the Supplier having given the Client and such Employee the opportunity to offer and accept employment with the Client pursuant to paragraph 2.1.2 above, the Client shall indemnify and hold harmless the Supplier against all Losses, including claims for Employee Liabilities, incurred by the Supplier for such Employee including in connection with:
- (a) the employment of such Employee from date of the transfer or alleged transfer; and
 - (b) the termination of such Employee's employment.
- 2.2 The Client shall in addition to the indemnity in paragraph 2.1.4, indemnify the Supplier against any Losses which the Supplier may incur in connection with or arising out of:
- 2.2.1 the termination by the Client of the employment of any of the Employees before or after the relevant SOW Commencement Date;
 - 2.2.2 anything done or omitted to be done by the Client, or any other event or occurrence, in relation to the employment of any of the Employees at any time before or after the relevant SOW Commencement Date; and
 - 2.2.3 any breach by the Client of its legal obligations under the Employment Regulations including relating to the provision of information and consultation.
- 2.3 If a Statement of Work provides for the transfer of employees to the Supplier upon entry into the relevant Statement of Work:
- 2.3.1 the relevant Statement of Work shall name the employees who shall transfer to the Supplier upon entry into such Statement of Work ("**Transferring Employees**");
 - 2.3.2 the parties shall co-operate with one another to fulfil their information and consultation obligations under the Employment Regulations;
 - 2.3.3 paragraphs 2.1 and 2.2 shall only apply in respect of those Employees who are not named by the Client in the Statement of Work as Transferring Employees;
 - 2.3.4 the Supplier shall indemnify the Client against any Losses which the Client may incur in connection with or arising out of:
 - (a) the termination by the Supplier of the employment of any of the Transferring Employees on or after the relevant SOW Commencement Date;
 - (b) anything done or omitted to be done by the Supplier, or any other event or occurrence, in relation to the employment of any of the Transferring

Employees at any time on or after the relevant SOW Commencement Date;
and

- (c) any breach by the Supplier of its legal obligations under the Employment Regulations including relating to the provision of information and consultation;
- (d) provided that such Losses are not incurred as a result of any act or omission of the Client or its Affiliates.

3. EXIT

3.1 If by virtue of the Employment Regulations upon termination of any of the Services in whole or in part, any employment or any contract of employment or any liability regarding the employment of any Supplier Personnel shall transfer to (or be alleged to transfer to) the Client and/or a Replacement Supplier (an "**Exit Supplier Personnel**"), then:

3.1.1 either party shall, upon becoming aware of such allegation or effect, notify the other promptly but in any event not more than seven (7) days of becoming aware;

3.1.2 the Client shall give the Supplier the opportunity to offer employment to such Exit Supplier Personnel and such Exit Supplier Personnel the opportunity to accept that offer where the period of opportunity shall be not less than 28 days from either the date that the Client is notified by the Supplier of such allegation or effect or the date that the Supplier receives from the Client notification of such allegation or effect ("**the Exit Opportunity Period**");

3.2 The Supplier indemnify the Client, its Affiliates and/or any Replacement Supplier against any Losses which the Client and/or any Replacement Supplier may incur in connection with or arising out of:

3.2.1 the termination by the Supplier of the employment of any of the Supplier Personnel before the relevant Termination Date;

3.2.2 anything done or omitted to be done by the Supplier, or any other event or occurrence, in relation to the employment of any of the Exit Supplier Personnel at any time before the relevant Termination Date; and

3.2.3 any breach by the Supplier of its legal obligations relating to the provision of information and consultation under the Employment Regulations;

provided that such Losses are not incurred as a result of any act or omission of the Client, its Affiliates and/or any Replacement Supplier;

3.2.4 not make any admission of liability without the prior consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed; and

3.2.5 not enter into any binding agreement or arrangement to settle such Employee Claim without the prior consent of the Indemnified Party, such consent not to be unreasonably withheld or delayed.

TERMINATION ASSISTANCE SCHEDULE

1. On termination of the Services:
 - 1.1 the Supplier shall provide the Customer with reasonable assistance to enable the Customer to recommence responsibility for the services itself, or have another third party provide it with a replacement service;
 - 1.2 the Supplier shall have no obligation to transfer and/or return copies of any data stored within the Supplier's Data Centre to the Client, unless the Client explicitly makes such a request in writing 30 days prior to the agreed termination date of the Services. The parties shall agree the method and way in which the Supplier shall make such a transfer to the Client at a Charge agreed by the parties. Should the Client not make such a request the Supplier shall delete the data within one (1) month of the termination date;
 - 1.3 the Client shall be responsible for paying for all termination assistance provided by the Supplier as described under this Schedule or as otherwise agreed in writing. Such Charges shall be agreed between the parties before any termination assistance commences; and
 - 1.4 unless otherwise agreed in writing, the Supplier may not be obliged to provide any assistance under this clause more than 6 months after the termination or expiry of the relevant Statement of Work.