

1. Definitions

1.1. In this Agreement, unless the context otherwise requires, the following words have the following meanings:

"Acceptable Use Policy"	means the Service Provider Acceptable Use Policy as at the Commencement Date and available to the Customer on request;
"Affiliate"	means, in relation to a Party, any company, partnership or other entity which directly or indirectly controls, is controlled by or is under common control with either party including as a Subsidiary or Holding Company or Subsidiary of such Holding Company (as such expressions are defined by Section 1159 of the Companies Act 2006 (as amended)) and in relation to Customer means and shall include any existing or future Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Customer. For the purposes of this definition, "control" or "controlled" or "controlling" means and shall be deemed to exist if a Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, either through contract, or by owning a controlling interest of the voting rights or of the equity capital of such other Person or of other ownership interests, or otherwise possesses or is able to exert a controlling influence over such other Person by virtue of: (i) having the ability to elect a majority of the board of directors of such other Person; or (ii) having the ability to appoint the management of such other Person; and "Person" means and includes any individual, firm, corporation wherever incorporated, company (general or with limited liability), partnership (general or limited), joint venture (whether or not having a separate legal existence), joint stock company, association (whether incorporated or not), trust and other organizations, government, state, agency of state or authorities thereof, and also such person's legal personal representatives and successors;
"Agreement"	means this agreement together with the Schedules and any appendices, and addenda attached hereto and the same may be amended and modified from time to time;
"Agreement Term"	means the duration of this Agreement as defined in Clause 2;
"Assigned Employees"	means any persons wholly or mainly employed or engaged by the Service Provider or any contractor or agent of the Service Provider in the provision of any of the Services or any part thereof;
"Business Day"	means a day (other than a Saturday or Sunday) on which clearing banks are open for business in either the UK or Ireland;
"Change"	means any alteration in the quality or quantity of the Services or the way in which they are performed, including the provision of additional services and amendments to any Service Levels, or any changes to the Hardware or the Software;
"Confidential Information"	means any information, communications or data, in any form, whether oral, written, graphic, electromagnetic, including all plans, proposals, forecasts, technical, methodologies, know-how, information about technological or organizational systems, customers, personnel, business activities, databases, IPR, the terms and conditions of this Agreement and other information in relation to it (and in the case of the Customer, all Customer Personal Data and any other data relating to the Customer's customers), whether or not it is specifically marked confidential but excluding any information, which: (i) was already known to the Recipient at the time of its disclosure to the Recipient and is not subject to confidentiality restrictions; (ii) which is in the public domain at the date of its disclosure to the Recipient or which thereafter enters the public domain through no fault of the Recipient (but only after it becomes part of the public domain); (iii) which, following its disclosure by the Disclosing Party to the Recipient, is received by the Recipient without obligation of confidence from a third party who the Recipient had no reason to believe was not lawfully in possession of such Information free of any obligation of confidence; or (iv) is independently developed by the Recipient without any reference to Confidential Information of the Disclosing Party, as evidenced by the records of the Recipient;
"Critical Services Failure"	means the failure of the Service Provider to provide the Services above the performance thresholds identified within each Schedule 2: Service Level Agreement such that the Service Provider may be considered in breach of this Agreement;
"Critical Service Level"	means a Service Level that is identified as a Critical Service Level in Schedule 2: Service Level Agreement;
"Customer Group"	means (i) Customer; and (ii) its Affiliates;
"Customer IPR"	means the IPR owned or licensed by the Customer;
"Customer Personal Data"	shall have the meaning set out in Clause 10.1;
"Customer Project IPR"	means all IPR other than the Service Provider IPR, arising as a result of or in connection with the performance of the Services including in any deliverables and any proposals, information, data, documents and reports, whether accepted or rejected, which are developed or delivered by or for the Service Provider Group pursuant to the provision of or relating to the Services;
"Customer's Representative"	means the person designated as the "Customer Contact" on the first page of this Agreement or such other person as may from time to time be appointed by the Customer and notified to the Service Provider;
"Customer's Safety and Security Procedures"	means those policies and procedures as may be amended or updated from time to time and notified to the Service Provider in writing by the Customer;
"Data Protection Legislation"	means the data protection laws implementing the Data Protection Directive 95/46/EC and any other Regulations in force from time to time relating to the processing of Personal Data as applicable to the Service Provider, the Customer and/or the Services;
"Data Subject"	shall have its corresponding meaning set out in the Data Protection Legislation which is applicable to that data;
"Disaster"	means any event or circumstance that causes the complete or a material partial loss, non-availability or abnormal functioning of one or more Services (for the avoidance of doubt this does not include planned outages);
"Disclosing Party"	means the party disclosing an item of Confidential Information;
"Future Service Provider"	means any service provider or service providers that the Customer (or any of its Affiliates) appoints on the expiry or termination of this Agreement (or any part thereof) for any reason to provide any service that replace any of the Services;
"Good Industry Practice"	means, in relation to any activity or requirement relevant to this Agreement, the exercise of that degree of skill, care diligence, prudence and foresight and using the practices, processes, procedures and guidelines which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of such activity or requirement under the same or similar circumstances and conditions in the United Kingdom;
"Governmental Authority"	means any court, government, regulatory agency or authority or like body (in each case whether international, national or local and in any jurisdiction) (including but not limited to the UK Financial Services Authority, the Information Commissioner's Office and each of their successors);
"Hardware"	means the hardware, including the associated firmware set out in Article 3 of Schedule 1: Service Definition;
"Implementation Plan"	means the plan set out in Article 2 of Schedule 1: Service Definition;
"IPR"	means all intellectual property rights, wherever in the world, howsoever arising and in whatever media, whether or not registered, including copyright, patents, trademarks, service marks, trade names, rights in databases, trade secrets, utility models, se-conductor rights, know-how, registered design, and all rights in the nature of unfair competition rights or rights to sue for passing off and any applications for protection or registration of these rights and all renewals and extensions thereof throughout the world;
"Network Software"	means software associated with and necessary to operate firewalls and network equipment;
"Other Software"	means the management software and other software as may be acquired from time to time, as specifically defined in Article IV of Schedule 1: Service Definition;
"Party"	means either the Service Provider or the Customer and "Parties" shall mean both of them;
"Patch"	refers to the minor fix level to the Revision;
"Personal Data"	shall have its corresponding meaning set out in the Data Protection Legislation which is applicable to that data;
"Personnel"	means officers, directors, employees, workers and agents (including any persons hired as consultants or contract staff)
"Premises"	means the premises set out in Part 3 of Schedule 1: Service Definition and/or such other premises from which the Service Provider may deliver the Services from time to time;

"Procedure Manual"	means the manual specifying the procedures governing the provision of services;
"Process", "Processed" and "Processing"	shall have its corresponding meaning set out in the Data Protection Legislation which is applicable to that data;
"Recipient"	means the party receiving an item of Confidential Information;
"Recovery Point Objective"	means the state or point a business needs to recover data to in order to carry on business following a Disaster;
"Recovery Time Objective"	means the maximum amount of time a business can allow a system or application to be unavailable following a Disaster;
"Regulations"	means any present or future law, order, enactment, regulation, regulatory policy, guidelines, requirement or industry code of any Governmental Authority (including good practice codes) applicable to Services or any other activities under this Agreement or a Party;
"Regulatory Requirement"	means any legislation, lawful requirement or demand (including circulars and guidelines), as amended from time to time, of any Governmental Authority or court order relating to either of the Parties or the Services including regulations relating to insurance, banking, fund management, stock exchanges, data protection as well as any mandatory instructions or requests by any Governmental Authority;
"Revision"	means the major fix level to the Version;
"Schedule" or "Schedules"	means a schedule or the schedules hereto;
"Schedule Term"	means the period as stated in each Schedule 3: Pricing during which the Service Provider is to provide the Services to the Customer;
"Security Interest"	means any mortgage, pledge, lien, charge, assignment, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security;
"Security Policy"	means the Service Provider Security Policy as at the Commencement Date and available to the Customer on request;
"Service Charges"	means the amount payable to the Service Provider by the Customer in consideration for the performance of the Services, calculated in accordance with Schedule 3:Pricing and net of any deduction made as a result of the Service Provider incurring Service Credits;
"Service Credit"	means a credit against the Charges made in accordance with the provisions of the applicable Service Level as set out in paragraph 4.6 of Schedule 2: Service Level Agreement;
"Service Levels"	means the service levels specified in Schedule 2: Service Level Agreement;
"Service Provider"	means (i) Verranti Networks Ltd; and (ii) its Affiliates, which may both also be referred to as the "Service Provider Group";
"Service Provider IPR"	means the IPR which is owned by, developed by or licensed to the Service Provider and which is used for the provision of the Services other than the Service Provider Project IPR, the Customer Project IPR and the Customer IPR;
"Service Provider Project IPR"	means the IPR which the Service Provider develops during the Agreement Term as a deliverable of or in support of the Implementation Plan for the Services but which is provided to the Customer as part of the Services;
"Service Provider Representative"	means the person designated as the "Service Provider Contact" on the first page of this Agreement, or such other person as may from time to time be appointed by the Service Provider and approved in writing by the Customer (such approval not to be unreasonably withheld or delayed);
"Services"	means the services to be supplied by the Service Provider pursuant to this Agreement, more particularly described in Schedule 1: Service Definition annexed to these terms (including, for the avoidance of doubt, the implementation of the Implementation Plan);
"Services Commencement Date"	means in respect of the Schedules the date as specified in each Schedule 3: Pricing upon which the Service Provider first starts to perform the Services (or part thereof) under those Schedule(s);
"Services Delivery Schedule"	means the plan with dates agreed between the Service Provider and the Customer as per Clause 15 for when the Service Provider is to commence delivery of each individual service as described in Schedule 1: Service Definition;
"Shared Service"	means a service provided on hardware owned by the Service Provider that can be utilised by multiple Service Provider customers and thus is not dedicated to the Customer;
"Software"	means the Network Software, System Software and Other Software;
"Service Definition"	means the Service Definition set out in Schedule 1: Service Definition;
"Staff Screening"	has the meaning and scope as given in Payment Card Industry Data Security Standard Version 2 October 2010;
"System Software"	means operating system software;
"Third Party Service Provider"	means any third party agent, contractor or sub-contractor of the Customer, who is (from time to time) engaged to perform and/or provide services or business process operation for and to, or otherwise support the business of the Customer or any of its Affiliates and who may be an individual, corporate entity, partnership or organisation;
"Version"	refers to the major and minor release levels of Software

- 1.2. References in this Agreement to clauses or schedules are to clauses of, or Schedules to, this Agreement. For the avoidance of doubt references in a Schedule to Appendices or Articles shall be to the Appendices or Articles of that Schedule.
- 1.3. The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement. If and to the extent that there is an inconsistency between the terms of the body of this Agreement and its Schedules, the terms of the body of this Agreement shall prevail unless expressly stated otherwise.
- 1.4. In this Agreement, unless the context otherwise requires:
- words in the singular include the plural and vice versa and words in one gender include any other gender;
 - words defined in the Schedules or on the signature page of this Agreement have the meaning set out in that definition;
 - a reference to:
 - any Party includes its successors in title and permitted assigns;
 - a "person" includes any individual, firm, corporation wherever incorporated, trust, joint venture (whether or not having a separate legal existence), partnership, limited liability company, association (whether incorporated or not), or any other entity, or any governmental body or subdivision, agency, or authority;
 - "including", "include", "in particular" or any similar expression shall be construed as illustrative and the words following any of those terms shall not limit the sense of the words preceding those terms; and
 - "in writing" includes, except for the purposes of Clause 15, communications via electronic mail.
- 1.5. The headings in this Agreement are for convenience and are not to be used in interpreting the Agreement.
- 1.6. Reference to any statute or statutory provision includes reference to the statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.7. If there is any ambiguity between the terms of a Schedule, the appendices to a Schedule, or this Agreement the following order of priority shall prevail:
- the Schedules;
 - the Appendices and/or Articles to a Schedule;
 - this Agreement

2. Appointment and Duration

- 2.1. The Customer appoints the Service Provider to provide the Services during the Agreement Term under the terms of this Agreement.
- 2.2. This Agreement will commence on the Commencement Date and shall continue until expiration or termination of all Schedules unless otherwise terminated as provided in this Agreement.
- 2.3. Any Schedule(s) will commence on the Services Commencement Date and, subject to Clause 19, and elsewhere as specified in this Agreement, shall continue for the Schedule Term defined in the Schedule 3: Pricing and any written agreed extension of the Schedule Term.
- 2.4. Any change(s) to the original service, including, but not limited to quantities, hardware, software or engineering, will be added to the original contract and billed in addition to the existing service contract. This is deemed to be an amendment to the original contract.
- 2.5. Any change(s) to a Subscription Service shall continue for the length of the original contract in addition to the duration of the original contract that has already passed.

3. Procedure Manual

- 3.1. The Parties shall, each acting in good faith, use all reasonable endeavours to agree the Procedure Manual within sixty (60) days of the date of this Agreement and once agreed changes to it shall be subject to the procedure set out in Clause 16. Any failure to agree the Procedure Manual shall be referred for resolution in accordance with Clause 28.

4. Hardware and Software

- 4.1. The Service Provider will provide the Services using:
- Hardware owned by the Service Provider, Customer or Affiliates of the Parties, to be installed at the premises detailed in Schedule 1: Service Definition; and
 - Software licensed to the Customer by third Parties, to be installed on the Hardware as detailed in Schedule 1: Service Definition.
- and maintained by the Service Provider in good working order for the duration of this Agreement.
- 4.2. The Service Provider has inspected the Hardware and been involved in its specification and acknowledges that it is suitable for the provision of the Services as at the Services Commencement Date.
- 4.3. The Hardware shall be used by the Service Provider only for the purposes set out in this Agreement. The Service Provider shall:
- not cause or permit any item of Hardware to be employed, used or operated in any manner contrary to any Regulations;
 - procure that each item of Hardware is employed, used or operated:
 - in a skillful, careful and proper manner;
 - only for the purpose for which it was designed; and
 - in accordance with and subject to all instructions issued by the manufacturer of that item of Hardware, Regulatory Requirement and any Governmental Authority.
- 4.4. The Service Provider shall keep each item of hardware in a good, safe, and serviceable condition and state of repair (fair wear and tear excepted) to the standard and at the service intervals recommended by the manufacturer of the hardware.
- 4.5. The Service Provider shall not attempt or hold itself out as having any power to sell, charge or otherwise encumber or sell or otherwise dispose of any item of the Hardware or any interest in any item of the Hardware nor shall it create, incur or suffer to exist any Security Interest in respect of any item of Hardware.
- 4.6. The Service Provider shall permit the Customer or its representatives at all reasonable times and on reasonable notice to inspect the Hardware and the Service Provider's management systems and facilities relating to the Hardware and shall afford all necessary access, assistance and proper facilities for such inspections (whether located on premises under the Service Provider's or the Service Provider's permitted sub-contractor's control) and for this purpose the Service Provider authorises or shall procure that the Customer and its representatives are authorised to enter into the premises at which the Hardware or any of it may from time to time be located. The Customer and its representatives shall be escorted by the Service Provider Representatives at all times and the Service Provider shall be obliged to make such representatives available to allow the Customer to exercise its rights under this Clause 4.6.
- 4.7. The Service Provider shall:
- maintain all such records, information and documents that are required to be maintained in respect of the Hardware to comply with any Regulatory Requirements and in accordance with best practice ownership, operating and management practice;
 - keep accurate, complete and up to date records of the maintenance, repairs, additions, alterations and modifications to, and removal of parts from, each item of Hardware; and
 - permit the Customer or its representatives at any time on reasonable notice to examine and take copies of such records, information and documents.
- 4.8. The Hardware shall be kept at the Premises, except for temporary removal for the purposes of repair or maintenance and, save in the case of emergency, any such removal shall be agreed in writing by the Customer in advance.
- 4.9. On expiry of this Agreement, the Service Provider shall at its risk but at the Customer's expense, return the Hardware owned by the Customer to the Customer at such place as the Customer requires. The Hardware shall be returned in a good, safe and serviceable condition and state of repair (fair wear and tear excepted) and otherwise in the condition required pursuant to this Agreement.
- 4.10. Except where a service is designated a Shared Service, the Service Provider agrees, during the Schedule Term, not to permit any other person other than Customer or Customer's nominee to utilize any portion of the Hardware or Software without the express written consent of Customer. Such consent by Customer may be revoked at any time.
- 4.11. The Hardware owned by the Customer shall be at the Customer's risk at all times and the Customer shall procure that the Hardware is insured against all risks as required by Regulatory Requirement and otherwise deemed reasonable by the Customer for protection of its business operations (regardless of the owner of title to such property). The Customer shall also effect and maintain insurance policies for public liability, material damage and business interruption cover from the Services Commencement Date until such date as is necessary to ensure that insurance is provided for all of the Customer's liabilities arising under this Agreement and which would usually be covered under such policies irrespective of when any claim in relation to any such liability is made. Such insurance shall be maintained with a reputable insurer and the Customer shall produce on demand for inspection by the Service Provider adequate proof of such insurance.

5. Obligations of the Service Provider

- 5.1. The Service Provider shall provide all Service Provider and Third Party Service Provider Personnel in sufficient numbers to properly execute the Services.
- 5.2. The Service Provider shall perform the Services in accordance with this Agreement.
- 5.3. The Service Provider shall implement and operate measurement and monitoring tools and procedures to measure and report to the Customer on its performance of the Services in accordance with Schedule 2.
- 5.4. If in the reasonable opinion of the Customer, the Service Provider fails to provide the Services in accordance with the requirements of this Agreement (and without prejudice to any other rights and remedies of the Customer in this Agreement) the Service Provider shall within 5 Business Days:
- perform a root-cause analysis to identify the cause of such failure;
 - provide a plan and/or date (as applicable) that is within a period as would be provided in accordance with Good Industry practice for correcting such failure;

- provide the Customer with reasonable evidence that such failure shall not recur; and
 - provide the Customer with a written report detailing the cause of, and procedure for correcting, such failure.
- 5.5. Notwithstanding the payment of any Service Credits and any other remedy to which the Customer may be entitled, the Customer shall be entitled to terminate this Agreement and to a refund of any pre-payments made in advance of the effective date of termination in the event of a material breach that cannot be remedied subject to Clause 19.2 by the Service Provider of any of the terms of this Agreement including the security requirements.

6. Warranty and Undertaking

- 6.1. The Service Provider warrants and undertakes that:
- The Services will be performed in accordance with Good Industry Practice by Personnel of appropriate skill and experience acting at all times in good faith and with due diligence and in accordance with the Service Provider obligations under this Agreement;
 - it will only use technically competent and properly trained and qualified Personnel in the provision and performance of the Services and will maintain the required competencies for the term of this Agreement;
 - it will use all reasonable efforts to ensure that its Personnel are honest, law-abiding and have no known links to any entity, group or network which participates in, encourages or supports unlawful activities;
 - it will conduct appropriate recruitment and security vetting procedures in relation to all Personnel involved in the provision and performance of the Services, including but not limited to proof of legal right to work in the United Kingdom, proof of identity, proof of current residence and other vetting as required to comply with Staff Screening;
 - it will, and will ensure that all members of its Personnel will, take reasonable care to ensure that it and they do not interfere with the operations of the Customer Group, their employees or any other third party unless said operations would result in the Service Provider failing in its obligations under the terms of this Agreement;
 - it will properly supervise the carrying out of the Services, and adequately manage the risks associated with the Services;
 - if the Customer (acting reasonably) requests that a member of Personnel should be removed from the provision of the Services by reason of competence, regulatory compliance or breach of warranty, the Customer will inform the Service Provider in writing and the Service Provider will promptly work with the Customer to agree a plan and timeline for the removal of that person from the provision of the Services and will not permit that person to be involved subsequently in the provision of the Services without the prior written consent of the Customer;
 - it has and will continue to have the authority to grant to the Customer any rights to be granted hereunder and owns or has obtained valid licences to any IPR necessary for the fulfilment of all its obligations under this Agreement;
 - it agrees to comply with and ensure its Personnel complies with all policies relating to the provision of the Services notified to the Service Provider in writing by the Customer from time to time and to perform the Services in a manner that does not cause the Customer to be in breach of any such policies. The Customer agrees to accept and cover any reasonable costs incurred by the Service Provider in implementing policies notified to the Service Provider after the date of this Agreement;
 - it has taken and will continue to take all practical steps, in accordance with Good Industry Practice, to prevent the introduction of any virus into any systems, data or software owned by or under the control of the Customer including the installation of the most current available release of the antivirus software specified in Schedule 1: Service Definition and, with the agreement of the Customer, the most current available release of the firewall protection software specified in Schedule 1: Service Definition;
 - it will maintain the Hardware and Software in good working order and where appropriate enter into and keep in force maintenance contracts for Hardware and Software necessary to provide the Services. Additionally, the Service Provider will ensure that all maintenance contracts will be assignable to the Customer in the event of termination of this Agreement and shall provide all reasonable assistance to the Customer to put into place any such assignment. The Service Provider shall consult with and obtain the prior written consent of the Customer prior to concluding any maintenance contracts for Hardware and Software, with such consent not being unreasonably withheld by the Customer. The Customer reserves the right not to approve any maintenance contracts for Hardware and Software used by the Service Provider to provide Services;
 - it has obtained and will maintain the right to use the third party software identified in Schedule 1: Service Definition, that is needed by the Service Provider to provide Services to the Customer. Upon termination the Service Provider will if requested by the Customer assign or novate such contracts to the Customer, except where the Customer has agreed in writing at the time the right to assign or novate the contract to the Customer was not required;
 - it shall install and operate the Hardware and Software to the design agreed by the Customer and set out in Schedule 1: Service Definition. Additionally the Service Provider will ensure that the Hardware and Software are compatible and will enable the provision of the Services;
 - it has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Service Provider;
 - it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.
- 6.2. The Service Provider excludes all warranties, conditions or other terms that are not expressly set out in this Agreement, whether implied by statute, common law, course of dealing or otherwise, to the maximum extent permitted by law.

7. Confidentiality

- 7.1. The Recipient shall treat as strictly confidential all Confidential Information and may use the Confidential Information only for the performance of its obligations and the exercise of its rights under this Agreement.
- 7.2. The Recipient may disclose such part of the Confidential Information as is required by a court of competent jurisdiction or any Governmental Authority in the exercise of its powers, provided that:
- the Recipient shall take such steps as are reasonably necessary and available to maintain the confidentiality of the Confidential Information by the court or Governmental Authority; and
 - the Recipient shall provide the Disclosing Party with immediate written notice of any request for disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy.
- 7.3. Subject to the provisions of this Agreement, the Recipient may disclose the Confidential Information to those of its employees, agents, permitted sub-contractors, consultants, auditors and professional advisers that have a need to know the Confidential Information for the purposes of this Agreement. The Recipient shall take all reasonable measures available to it, and in any event not less than those used to protect its own Confidential Information, including:
- physical security of areas where access may be gained to the Confidential Information;
 - controls on access to any computer facility and tape or disk library where any Confidential Information may be kept;
 - visitor control;
 - controls over photocopying or otherwise duplicating Confidential Information;
 - document and computer network control systems which limit access to the Confidential Information to employees, contractors and agents who have a need to have such access for the purposes of this Agreement and which provides for a secured method of destruction; and
 - confidentiality agreements with the Recipient's employees, professional advisors, contractors (or in the case of the Service Provider, any permitted sub-contractors), agents or auditors who are permitted access to the Confidential Information, which shall be for the benefit and enforceable at the instance of each Party.
- 7.4. In the event that the Recipient learns of any unauthorised use or disclosure, or threatened unauthorised use or disclosure, of any Confidential Information, the Recipient shall as soon as reasonably practicable notify the Disclosing Party of the particulars of such use or disclosure.
- 7.5. Upon expiration or termination of this Agreement (whichever is the sooner), the Recipient shall within fifteen (15) days:
- return all Confidential Information then in its or its Personnel's possession or control, including whole or partial copies thereof in any media, all notes, memoranda and other materials containing Confidential Information, to the Disclosing Party; and
 - deliver written certification to the Disclosing Party that all of the Confidential Information which it or its Personnel have had in their possession or control and which has not been returned has been securely destroyed.
- 7.6. Notwithstanding Clause 7.5, the Recipient is released from its obligation to return or destroy all Confidential Information to the extent that it is obliged to store or retain the respective information due to legal or accounting requirements. Each Party is permitted to store one (1) copy of the respective information for archival purposes in accordance with Regulatory Requirements.
- 7.7. Promptly on the Customer's request, the Service Provider shall (and shall procure each of its Personnel) do all things and execute all further documents necessary to give full effect to this Clause 7.
- 7.8. Notwithstanding anything contained in this Clause 7, the Customer may as the Customer thinks fit:
- disclose this Agreement (and its contents):
 - to any of its Affiliates; or
 - to any third parties in connection with any due diligence process, provided that such third party confirms in writing to comply with the confidentiality obligations as set out in this Agreement;
 - to any legal authority or court authority; and

- b) store this Agreement at any place under the control of the Customer or its Affiliates.
- 7.9. All rights, title and interest in the Confidential Information shall remain the property of the Disclosing Party. The Recipient acknowledges that it shall not acquire any right, title to, interest in or licence in respect of any part of the Confidential Information.
- 7.10. A Recipient's obligation to maintain the confidentiality of Confidential Information and the restrictions on such Recipient's use of the Confidential Information, as provided in this Clause 7, shall survive the termination of this Agreement.

8. IPR Ownership and License

- 8.1. The Parties acknowledge that:
- a) the Service Provider is the owner or licensed user of the Service Provider IPR and the Service Provider Project IPR, and that except as specified in Clause 8.4, nothing in this Agreement shall confer on the Customer any right, title or interest in the Service Provider IPR and the Service Provider Project IPR; and
- b) the Customer is the owner or licensed user of the Customer IPR, and that except as expressly specified in Clause 8.3, nothing in this Agreement or otherwise shall confer on the Service Provider or its Personnel any right, title or interest in the Customer IPR.
- 8.2. For the avoidance of doubt, the Service Provider acknowledges that documents, records or other materials provided or made available to the Service Provider or any of its Personnel by or on behalf of the Customer and any amendments additions or changes to them, shall be owned by and remain within the ownership of the Customer and nothing in this Agreement or otherwise shall confer on the Service Provider or its Personnel any right, title or interest in respect of such documents, records or materials.
- 8.3. Subject to the Customer obtaining all necessary consents from third party licensors, the Customer hereby grants to the Service Provider a non-exclusive, non-transferable, revocable, royalty-free licence for the Schedule Term to use such of the Customer IPR as relates to the Services strictly for the purposes of and to the extent necessary to perform this Agreement.
- 8.4. The Service Provider hereby grants the Customer Group a non-exclusive, royalty-free, perpetual and irrevocable worldwide licence and right to use the Service Provider IPR, the Service Provider Project IPR and all relevant materials for the purposes of and to the extent necessary to receive and obtain the full benefit of the Services and in order to provide or obtain services the same as or similar to the Services, itself or through any Future Service Provider.
- 8.5. The Parties acknowledge and agree that all Customer Project IPR shall be the property of or licensed to the Customer. The Service Provider hereby:
- a) assigns with full title guarantee to the Customer all right, title and interest in any Customer Project IPR which belongs to the Service Provider or the Service Provider Group;
- b) grants or undertakes to procure the grant to the Customer of a non-exclusive, perpetual and irrevocable, royalty-free, worldwide licence to use any Customer Project IPR which is not owned by the Service Provider or the Service Provider Group for the benefit of and at no cost to the Customer Group; and
- c) agrees to perform all further acts necessary to perfect any of the foregoing, including by the execution of any and all deeds and documents, at the request of the Customer but at the Service Provider's own expense.
- 8.6. The Customer agrees to and shall grant to the Service Provider a non-exclusive, non-transferable, revocable, royalty-free licence to use the Customer Project IPR during the Schedule Term for the sole purpose of providing the Services to the Customer and/or its Affiliates pursuant to this Agreement.
- 8.7. The Service Provider acknowledges that a breach of this Clause 8 shall cause irreparable harm and injury to the Customer, and, accordingly, the Customer shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to seek an injunction restraining the Service Provider from breaching or threatening to breach this Clause 8.

9. IPR Indemnity

- 9.1. The Service Provider shall fully indemnify the Customer (and any affiliates and Third Party Service Provider) against all claims, demands, actions, reasonable costs, reasonable expenses (including but not limited to reasonable legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any IPR used in the provision of the Services, by the use or possession of any Hardware or Software provided by the Service Provider to the Customer (and any Affiliates and Third Party Service Provider) in conjunction with the provision of Services under this Agreement and by the assignment to the Customer of IPR pursuant to Clause 8.
- 9.2. Each Party shall as soon as reasonably possible notify the other Party if any claim or demand is made or action brought against it for infringement or alleged infringement of any IPR by reason of the use or possession of any Hardware and Software by the Customer or in connection with the Services.
- 9.3. The Service Provider shall at its own expense conduct any litigation arising there from and all the negotiations in connection therewith and the Customer hereby agrees to grant the Service Provider exclusive control of any such litigation or such negotiations, providing the Customer with full and prompt disclosure through the proceedings.
- 9.4. The Customer shall at the request of the Service Provider afford all reasonable assistance for the purpose of contesting any such claim, demand or action and shall be repaid all costs and expenses incurred in so doing.
- 9.5. The Customer shall not make admissions, which may be prejudicial to the defence of such claim or demand or action.
- 9.6. If a claim, demand or action for the infringement or alleged infringement of any IPR is made in respect of any Hardware or Software or the Services or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider may at its own expense:
- a) modify or replace any Hardware or Software or (with the Customer's consent) the Services without reducing the performance or functionality of the same, so as to avoid the infringement or the alleged infringement and the terms herein shall apply mutatis mutandis to such modified or replaced Hardware, Software and Services; or
- b) procure a licence to use any Hardware or Software, or modify or replace the Services, on terms which are acceptable to the Customer.
- 9.7. If a replacement or modification in accordance with Clause 9.6 a) is not possible so as to avoid the infringement or the Service Provider has been unable to procure a licence in accordance with Clause 9.6 b) without prejudice to any other rights and remedies the Customer may have under this Agreement or at common law, the Service Provider shall be liable for the full value of any replacement Hardware, Software and the Services together with associated costs incurred in implementing such replacement. Failure to provide a replacement or modification in accordance with Clause 9.6 a) so as to avoid the infringement or to procure a licence in accordance with Clause 9.6 b) shall constitute a material breach within the meaning of Clause 19.
- 9.8. Without prejudice to any other rights and remedies the Customer may have under this Agreement or at common law, in the event that, due to a claim, demand or action arising from or by reason of infringement or alleged infringement of any IPR, the quiet enjoyment by the Customer of any Hardware, Software or the Services are disrupted or impaired and the Service Provider:
- a) has not, within five (5) Business Days of the commencement of such disruption or impairment commenced all appropriate and effective actions to restore to the Customer the quiet enjoyment of any Hardware, Software or the Services by exercising its rights in accordance with Clause 9.6; and thereafter
- b) does not use all reasonable efforts to pursue such actions to restore to the Customer the quiet enjoyment of any Hardware, Software or the Services,
- then notwithstanding anything contained in Clauses 9.3 to 9.5 (inclusive), the Customer may conduct negotiations and make a settlement necessary to enable the Customer to continue to use any Hardware, Software or the Services. Such negotiations and settlement shall relate solely to the continued use of any Hardware, Software or the Services and any settlement made by the Customer shall be expressed to be without prejudice to the conduct by the Service Provider under the provisions of Clause 9.2 of any litigation arising from, or settlement of, such claim, action or demand.
- 9.9. The foregoing states the entire liability of the Service Provider with regard to the infringement of any IPR by the use or possession of any hardware or in connection with the Services.

10. Data Protection

- 10.1. The Service Provider shall comply with its obligations under the Data Protection Legislation in relation to all Personal Data that are Processed by it by or on behalf of the Customer or otherwise in connection with this Agreement ("Customer Personal Data").
- 10.2. The Service Provider shall only undertake Processing of Customer Personal Data in connection with the performance of its obligations under this Agreement and for the purposes expressly authorised by the Customer. The Service Provider shall comply with all instructions given by the Customer from time to time in relation to such Processing, including any request from the Customer requiring the Service Provider to amend, transfer or delete the Customer Personal Data.
- 10.3. Unless the Customer expressly requires otherwise, the Service Provider shall not disclose Customer Personal Data to any third parties other than:
- a) to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Service Provider to carry out its obligations under this Agreement; or
- b) to the extent required under a court order,
- provided that disclosure under Clause 10.3 a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 10 and that the Service Provider shall give notice in writing to the Customer of any disclosure of Customer Personal Data that it or a sub-contractor is required to make under Clause 10.3 b) immediately it is aware of such a request.
- 10.4. The Service Provider shall not transfer any Customer Personal Data into any country or territory outside of the European Economic Area without the prior written consent of the Customer. The Service Provider shall in addition not store or Process any Customer Personal Data outside the United Kingdom except with the prior written consent of the Customer. The Customer reserves the right, as a condition to the granting of such consent, to require the Service Provider to enter and/or the Service Provider shall procure that its agent(s) and sub-contractor(s) enter into a separate agreement which complies

- with the requirements of the Data Protection Legislation for the transfer of Personal Data outside the European Economic Area and incorporating the applicable EU model Clauses for such transfer.
- 10.5. The Service Provider shall implement appropriate technical and organisational security measures governing the Processing of all Customer Personal Data. These measures shall ensure an appropriate level of security so as to avoid unauthorised or unlawful processing or accidental loss, destruction or damage of such Customer Personal Data including but not limited to taking reasonable steps to ensure the reliability of Personnel having access to such Customer Personal Data.
- 10.6. The Customer may at any time request a written description of the technical and organisational methods employed by the Service Provider referred to in Clause 10.5. Within five (5) Business Days of such a request, the Service Provider shall supply written particulars of all such measures detailed to a reasonable level such that the Customer can determine whether or not, in connection with Customer Personal Data, any applicable data is or has been Processed in accordance with the Data Protection Legislation.
- 10.7. The Service Provider shall:
- a) ensure that all Customer Personal Data are accurately entered into data management systems and, where necessary kept up to date, corrected or erased if found to be inaccurate;
- b) notify the Customer promptly, and in any event within five (5) Business Days of receipt of any communication received from a Data Subject regarding data protection;
- c) if a Data Subject exercises any of its rights under the Data Protection Legislation (including rights of access, correction, blocking, suppression or deletion as are available to such individual) then the Service Provider shall notify the Customer and provide such data as the Customer instructs; and
- d) co-operate with all reasonable requests or directions of the Customer arising directly from, or in connection with the exercise of the functions by it or the relevant Governmental Authority under the Data Protection Legislation or otherwise, including:
- (i) the issuing of any guidelines or code concerning data protection; and
- (ii) the handling of any complaint alleging an interference with the privacy of an individual or alleging a breach of Data Subjects rights under the Data Protection Legislation.
- 10.8. The Service Provider shall promptly inform the Customer if any Customer Personal Data is known or suspected to be lost or destroyed or becomes damaged, corrupted, or unusable. The Service Provider shall restore such Customer Personal Data at its own expense.
- 10.9. The Service Provider shall not use or authorise any third party or sub-contractor to process the Customer Personal Data except with the Customer's prior written consent. In seeking such consent, the Service Provider shall supply to the Customer full details of such proposed third party or sub-contractor. In granting such consent, the Customer reserves the right to impose such conditions as it may think necessary to safeguard the Customer Personal Data or to otherwise procure compliance with the requirements of the Data Protection Legislation.
- 10.10. The Service Provider agrees to indemnify and keep indemnified the Customer and each member of the Customer Group against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Customer or any member of the Customer Group as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Service Provider's unauthorised and/or unlawful Processing, destruction of and/or damage to any Customer Personal Data and any failure by the Service Provider or its employees or agents to comply with any of its obligations under this Clause 10.
- 10.11. The Service Provider agrees to indemnify and keep indemnified the Customer and each member of the Customer Group for all fines and penalties imposed by any Governmental Authority which the Customer or any of the Customer Group is required to pay arising from a breach of applicable Data Protection Legislation that has been caused by or arisen out of any failure by the Service Provider or its employees or agents to comply with any of its obligations under this Clause 10, provided that the Customer or the member of the Customer Group (as applicable) has used reasonable efforts to attempt to mitigate any such fine or penalty.
- 10.12. At the Customer's request, the Service Provider shall provide to the Customer a copy of all Customer Personal Data held by it in the format and on the media reasonably specified by the Customer.
- 10.13. The Service Provider shall keep a record of any Processing of Customer Personal Data. The Service Provider shall allow the Customer to audit such record(s) and the Service Provider's compliance with the requirements of this Clause 10 on reasonable notice and/or to provide the Customer with evidence of its compliance with the obligations set out in this Clause 10.
- 10.14. Failure to comply with this Clause 10 shall constitute a material breach of the Agreement without prejudice to the right of either Party to determine that any other breach of the Agreement constitutes a material breach. In the event of such breach, the Party who is not in breach may terminate the Agreement under the provisions of Clause 19.
- 10.15. The Customer shall remain the sole owner of its respective data together with all copyright, database rights and other IPR in such data and any compilation of such data.

11. Regulated Activities and Audit

- 11.1. The Service Provider shall, and shall procure that its employees, agents, subcontractors and suppliers shall:
- a) comply with all Regulatory Requirements;
- b) deal with all Governmental Authorities in an open and co-operative manner;
- c) grant all Governmental Authorities access on request to premises, staff and records during reasonable business hours; and
- d) provide all Governmental Authorities with such information as they may reasonably require.
- 11.2. Either Party shall be entitled to request modifications to the Services and/or the obligations hereunder in the event of a change to the Regulatory Requirements to secure compliance with Regulatory Requirements. Such changes shall be subject to the procedure in Clause 8 with costs covered pursuant to Clauses 11.3 and 11.4 as applicable.
- 11.3. The Parties agree that where a Governmental Authority requires changes to any Services which are specific to the Customer and such changes are required over and above any general changes required by such Governmental Authority for other customers of Blue chip governed by the same Governmental Authority, the Customer shall be liable to pay the reasonable costs of the Service Provider for implementing those changes to the Services to meet the requirements of the Governmental Authority.
- 11.4. The Parties agree that where a Governmental Authority requires changes to the Services and such changes are general changes required by such Governmental Authority for other customers of the Service Provider governed by the same Governmental Authority, the Service Provider shall apportion its reasonable costs for implementing those changes across those customers to whom the requirements of the Governmental Authority apply.
- 11.5. Each Party shall provide assistance, information and documentation to the other to the extent required to comply with any Regulatory Requirements or in that other Party's dealings with any Governmental Authority. The Service Provider shall provide such information and at such times as requested by the Customer to enable the Customer to monitor the performance of the Service Provider and evaluate risks.
- 11.6. Upon request the Service Provider shall (and shall procure that its subcontractors, agents and suppliers shall) provide any auditors and inspectors as the Customer or any Government Authority may designate:
- a) access during reasonable business hours (except as may be necessary to perform security audits) to the premises, staff and records of the Service Provider or its agents, subcontractors and suppliers for the purpose of performing audits or inspections of the business of the Customer and / or the Services, including (but not limited to) for the purpose of monitoring the performance of the Service Provider against the terms of this Agreement and reviewing the Service Provider's security practices and procedures; and
- b) all further assistance, co-operation and information as requested and required for the purposes of this Agreement.
- 11.7. The Service Provider shall supply to the Customer promptly such information relating to the Service Provider's financial condition and otherwise in relation to the business of the Service Provider as the Customer reasonably requests.

12. Security

- 12.1. The Service Provider will ensure that at all times it has in place and is operating in accordance with a Security Policy and Acceptable Use Policy as contained in the Service Provider's ISO 27001 manual.
- 12.2. The Service Provider shall maintain and enforce safety and security systems and procedures at the Premises to prevent unauthorised access to any and all Hardware, networks or resources that process or contain the Customer's information. Such safety and security systems and procedures shall as a minimum satisfy the requirements of and be consistent with:
- a) the Customer's Safety and Security and Risk Policies and Procedures;
- b) Good Industry Practice; and,
- c) Regulatory Requirements
- 12.3. The Service Provider shall establish and maintain reasonable safeguards against the destruction, loss or alteration of any data of the Customer's in the possession of the Service Provider or accessed by the Service Provider.
- 12.4. If the Customer considers (acting reasonably) that an insufficiency or weakness in the Service Provider controls:
- a) are in breach of any provision of this Agreement relating to the integrity and security of Confidential Information; or
- b) fail to meet the requirements of any Regulator providing governance over the Services and/or the Customer's use of said Services; or
- c) fail to meet the standards required by the terms of this Agreement and the associated Schedules; then the Customer may require the Service Provider to cure such insufficiency or failure and the Service Provider (at its own cost) shall, promptly, make those modifications that the Customer reasonably requires. Where the additional measures affect the Service Provider's subcontractors, suppliers and agents, the Service Provider shall procure that those measures are promptly implemented by the relevant subcontractors, suppliers and/or agents. Any sums expended by the Customer in

- implementing such measures shall not be considered as a liability for the purposes of the limitations of liability in Clause 17.
- 12.5. For the avoidance of doubt the Customer will accept the reasonable costs of the Service Provider in implementing any change in controls requested by the Customer when such requests are:
- not subject to the insufficiencies or failures as listed sub-Clause 12.4 or
 - identified as being attributable to controls that are (i) either the responsibility of the Customer (including sub-contractors and agents) and/or Third Party Service Providers, or (ii) are now the responsibility of the Service Provider but which are unchanged from before the Services Commencement Date;
 - then the Service Provider will only implement such changes following written agreement to acceptance of the costs and liability for any disruption to the provision of the Services by the Customer and the Customer will pay any sums invoiced as per Clause 15.
- 12.6. The Service Provider shall be responsible for any and all security breaches caused by Personnel and systems which are or could reasonably be expected to be under the Service Provider's control. Without prejudice to any rights and remedies of the Customer, upon the occurrence of any security breach the Service Provider shall immediately inform the Customer of the breach and shall use all reasonable endeavours to remedy such breach and to ensure that such security breach will not recur.
- 12.7. In addition to the obligation in Clause 12.3, the Service Provider shall promptly inform the Customer of:
- any potential breaches in security; and
 - all events and developments which may or shall adversely affect the Service Provider's ability to provide the Services; and
 - legal and statutory regulations.
- 12.8. Notwithstanding the obligations in this Agreement relating to confidentiality, data protection and security, if the Service Provider intends to provide services to another client of the Service Provider's from the Premises where the Service Provider is providing the Services under this Agreement, the Service Provider shall develop a process, subject to the Customer's approval, to restrict physical and electronic access in any such shared environment to the Customer's confidential information and to information relating to the provision of the Services under this Agreement so that the Service Provider's Personnel or sub-contractors or agents providing services to such other client do not have access to any of that information.

13. Business Continuity and Disaster Recovery

- 13.1. For the avoidance of doubt, the provisions laid out in this Clause 13 relate to the Service Provider DR Plans only. Where the Service Provider undertakes to deliver specific disaster recovery and/or business continuity services to the Customer, these services will be detailed in the Schedule 1: Service Definition or held within a discrete disaster recovery contract.
- 13.2. The Service Provider warrants that it has and undertakes that it will continue to have, in place its own disaster recovery plans and business continuity plans ("DR Plans") sufficient to mitigate the adverse impact of a Disaster on the provision of the Service and on the Customer where the ability of the Service Provider to provide the Services would otherwise be severely impaired, and containing specific timelines for each Software application to be restored to operational status. The Service Provider shall provide the DR Plans to the Customer within sixty (60) days of the date of this Agreement for the Customer's review. Following such review, the Customer shall notify the Service Provider of any amendments it reasonably requires to the DR Plans and the Service Provider shall forthwith incorporate such requirements into the DR Plans. For the avoidance of doubt, the provisions laid out in Clause 13 relate to the Service Provider DR planning only. Where the Service Provider undertakes to deliver specific disaster recovery services to the Customer, these services will be detailed in Schedule 1 "Statement of Work" or held within a discrete DR contract.
- 13.3. The Service Provider shall, at its cost:
- be responsible for the management and implementation of the DR Plans;
 - regularly (and not less than once in every twelve (12) months) review and maintain the DR Plans and, where reasonably possible or reasonably requested by the Customer, develop improved or superior DR Plans for submission to the Customer for approval;
 - regularly (and not less than once in every six (6) months) update and test the operability of the DR Plans (the updated DR Plans and the scope of the tests shall be agreed with the Customer in advance);
 - certify to the Customer that the DR Plans are fully operational not less than once in every six (6) month period;
 - co-operate with and provide all necessary assistance to the Customer when the Customer tests or invokes its business continuity / disaster recovery arrangements.
- 13.4. In the event of a Disaster:
- The Service Provider shall implement the procedures contained in DR Plans;
 - The Parties shall immediately convene an emergency management team to implement the Customer's prioritised requirements, to specify how the Disaster is to be managed and to ensure the communication is co-ordinated between the Parties and all relevant third parties; and
 - The Service Provider acknowledges that the Customer may require rapid implementation of changes to the Services on either a temporary or a permanent basis and will use its best endeavours to implement such changes to the Services as soon as possible (the implementation of changes to the Services required by the Customer shall not be delayed in any way due to any failure by the Parties to agree how the costs of that implementation should be apportioned between them).

14. Obligations of the Customer

- 14.1. During the Schedule Term, the Customer shall:
- afford the Service Provider such access to the Customer's site and to its relevant information, records and other material as is necessary to provide the Services;
 - make available the Customer Representative to liaise with the Service Provider.
- 14.2. Subject to the Service Provider having fulfilled its obligations under Clause 6.1 e), the Customer hereby warrants that the Service Provider's compliance with any instructions given in relation to the Service Provider's use of any third party item supplied directly by the Customer shall not cause the Service Provider to infringe the rights of the owner of the IPR of such third party item.

15. Payment

- 15.1. In consideration of the provision of the Services, the Customer shall pay to the Service Provider the Service Charges in accordance with the Payment Schedule defined in Schedule 3: Pricing subject to any agreed variations resulting from any:
- Service Credits due to the Customer pursuant to Schedule 2: Service Level Agreement; and/or
- 15.2. The first payment of the Service Charges (or part thereof) will become due on the Services Commencement Date. The Service Provider and the Customer will agree a Services Delivery Schedule during the Implementation as described in Schedule 1: Service Definition.
- 15.3. Unless otherwise specified in Schedule 3: Pricing invoices for the One Time Charges detailed in Schedule 3: Pricing, and for any incidental services authorised by the Customer will be issued upon satisfactory completion of the Implementation Services or other incidental services as applicable.
- 15.4. The Parties agree that the Service Charges are, unless stated, inclusive of all expenses anticipated to be incurred by the Service Provider in the performance of this Agreement and, subject to any Change to the Service Charges agreed in accordance with this Agreement, the Customer shall have no obligation to make any payment to the Service Provider other than the Service Charges.
- 15.5. Invoices will be submitted to the Customer Representative at the location defined in the signature page of this Agreement.
- 15.6. The Customer shall pay to the Service Provider the total undisputed amount of each invoice in Pounds Sterling by telegraphic transfer to an account nominated in writing by the Service Provider within thirty (30) days from the date of receipt by the Customer of correctly rendered invoice.
- 15.7. In the event that the Customer fails to pay any undisputed amount payable by it to the Service Provider on the due date for payment, the Service Provider shall be entitled to charge interest on the undisputed amount outstanding at the rate of three (3) per cent above the then current base rate of the Bank of England, from the due date for payment until the date of payment (whether before or after judgment). In relation to any disputed invoices, the Customer shall pay any undisputed amount in accordance with this Clause 15 and notify the Service Provider as soon as reasonably practicable in writing of the reasons for withholding the disputed amount.
- 15.8. The Service Charges are stated exclusive of value added tax, any similar sales tax and/or any tax that replaces such sales taxes.

16. Liability

- 16.1. The Parties accept unlimited liability for death or personal injury resulting from their acts or omissions in connection with this Agreement.
- 16.2. Neither Party shall be liable for special, indirect or consequential loss which shall include loss of profits, business, revenue, goodwill or anticipated savings.
- 16.3. Save as provided in Clause 17.2, each Party accepts liability for the losses arising as a consequence of its breach of this Agreement or its negligent or fraudulent acts and omissions and those of its officers, employees, agents and subcontractors in performance of this Agreement.
- 16.4. If and to the extent that the Customer is unable to recover loss suffered by any of its Affiliates under this Agreement, each Affiliate will be entitled to recover such loss directly from the Service Provider and to enforce this Agreement against the Service Provider for this purpose under the Contracts (Rights of Third Parties) Act 1999. The Customer and the Service Provider may withdraw from or vary this Agreement or terminate it in accordance with its terms without the agreement of any Affiliate.
- 16.5. Except in the case of:
- the liabilities accepted by the Parties under Clause 17.1;
 - claims by the Customer in relation to property damage to the Hardware; and
 - the indemnities given by the Service Provider in this Agreement,
- where each Party's liability to the other shall be unlimited, each Party's total aggregate 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 this Agreement shall be limited to £2,000,000 (two million Pounds Sterling) except where prohibited by law.
- 16.6. For the avoidance of doubt Service Credits paid to the Customer by the Service Provider prior to the act or omission giving rise to a claim under this Agreement shall not count towards the cap provided for in Clause 17.5 however Service Credits payable to the Customer by the Service Provider in respect of the specific act or omission giving rise to a claim under this Agreement shall count towards the cap provided for in Clause 17.5.
- 16.7. The provisions of this Clause 17 shall survive the termination of this Agreement howsoever caused.

17. Subcontracting

- 17.1. The Service Provider shall not sub-contract any of its obligations under this Agreement without the prior written consent of the Customer. In the event that the Customer consents to the Service Provider sub-contracting any of its obligations under this Agreement, the Service Provider shall procure and ensure that its permitted sub-contractors:
- enter into a confidentiality agreement in substantially the terms of the confidentiality provisions of this Agreement for the benefit of, and enforceable by, each party;
 - are authorised, licensed, qualified, approved and permitted to provide the sub-contracted goods or services as required by any Governmental Authority or other relevant persons and
 - at all times comply with any instructions and directions of the Customer.
- 17.2. Notwithstanding the sub-contracting of any of its obligations, the Service Provider shall be and shall remain responsible and liable for all its obligations pursuant to this Agreement and for all acts and omissions of its sub-contractors.
- 17.3. The Service Provider shall ensure that each sub-contract contains a term, which (subject to the Customer's written request) would automatically assign the benefit of such sub-contract to the Customer (without any amendment to the terms of such sub-contract) in the event that this Agreement is terminated by the Customer.

18. Term and Termination

- 18.1. This Agreement shall come into force on the Commencement Date and shall continue, subject to prior termination in accordance with its terms, in force for the Schedule Term. At the end of the Schedule Term, this Agreement shall remain in force, for a maximum period of twelve (12) months, subject to prior termination in accordance with its terms, unless and until terminated by either Party giving to the other Party no less than six (6) months' prior written notice of termination, expiring at any time after the end of the Schedule Term.
- 18.2. Each Party (for the purposes of this Clause "Party A") may by notice in writing immediately terminate this Agreement if the other (for the purposes of this Clause "Party B") shall:
- commit a material breach of this Agreement that is not capable of remedy (and for the purposes of this sub-Clause the incurring by the Service Provider of a Critical Service Failure shall be regarded as a material breach not capable of remedy);
 - commit a material breach of this Agreement which is capable of remedy but which shall not have been remedied within thirty (30) days of the receipt of a notice from Party A identifying the breach and requiring its remedy; or
 - gives notice in writing to the other if the other Party shall have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a Court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.
- 18.3. In the event that the Customer terminates this Agreement in accordance with Clause 19.2 then the Customer may also request that the Service Provider continues to provide the Service for a reasonable time after the termination date, but in any event for no more than six (6) months. The Customer will be liable for pro-rata Service Charges to the Service Provider for the Services in this period.

19. Consequences of Termination

- 19.1. Termination or expiry of this Agreement shall be without prejudice to any rights and remedies of the Service Provider and the Customer accrued before such termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 19.2. On termination or expiry of this Agreement for any reason, the Service Provider shall co-operate with, and provide all reasonable assistance to, the Customer and any Future Service. Subject to prior approval in writing the Customer shall pay the reasonable costs incurred by the Service Provider for the services duly provided under post termination services including assistance with completion of the Exit Transfer.
- 19.3. The Service Provider shall promptly and fully answer all reasonable questions about the Services which may be asked by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or any Future Service Provider (or potential Future Service Provider) to conduct due diligence.
- 19.4. Where the Customer has so directed, the Service Provider shall return all data (including Personal Data), records, documentation, information, materials, hardware and other property relating to or which is relevant to the provision of the Services ("Customer Property") in its possession or under its control, in a format acceptable to the Customer. In default of compliance with this Clause, the Customer may recover possession thereof and the Service Provider hereby grants licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or sub-contractors where any such items may be held.
- 19.5. The Customer shall provide details to the Service Provider of the Customer Property which the Customer requires to be destroyed by the Service Provider. The Service Provider shall, no later than fifteen (15) days after the expiration or termination of this Agreement, return the Customer Data to the Customer or at the direction of the Customer, destroy any unwanted Customer Property. Where the Customer requests the destruction of any Customer Property pursuant to this Clause 20.5, the Service Provider shall warrant to the Customer that the said destruction has been undertaken in accordance with the Customer's security requirements as notified by the Customer to the Service Provider. The Service Provider shall warrant and provide to the Customer a certificate (in a format approved by the Customer) providing proof within five (5) days of the completion of the destruction of such Customer Property that the said destruction has taken place.
- 19.6. At any time prior to the expiration or termination of this Agreement, and for thirty (30) days thereafter, the Customer shall be entitled on notice to the Service Provider to nominate (with an intention to purchase) any of the materials and assets used exclusively in relation to the Services and dedicated exclusively to the Services delivered to the Customer and not shared with any other of the Service Provider's customers. Forthwith following receipt of such notice the Service Provider shall provide and warrant details of the condition of such materials and assets and the price of the same. The price for such materials and assets shall be the reasonable market price as agreed between the Parties. In the event of any dispute between the Parties in relation to such price, the matter shall be referred to binding dispute resolution by the president for the time being of the Chartered Institute of Accountants the cost of such dispute to be borne by the parties in equal shares. Following receipt of such information the Customer shall elect by notice in writing to the Service Provider which of the materials and assets it wishes to purchase. The Service Provider shall make available to the Customer or the Future Service Provider or deliver as the Customer may specify immediately following the date of expiration or termination of this Agreement date (or at another time or times to be mutually agreed between the Parties) all of the materials and assets used exclusively in relation to the Services which the Customer has elected to purchase or authorised the Future Service Provider to purchase from the Service Provider. Title in the materials and assets purchased by the Customer or the Future Service Provider shall pass to the Customer immediately on transfer to the Customer or the Future Service Provider as appropriate.
- 19.7. The Service Provider shall make available to the Customer or the Future Service Provider immediately following the date of expiration or termination of this Agreement (or such other times as may be mutually agreed between the Parties) all of the materials in respect of which an assignment or licence of the IPR therein has been made or granted in favour of the Customer or sub-licensed in favour of the Future Service Provider.
- 19.8. In the event that the Service Provider incurs costs in complying with its obligations in Clause 20.4, these costs shall be agreed in writing with the Customer and the Customer acknowledges that these costs will be based upon the Service Provider being paid a rate specified in Schedule 3.
- 19.9. At any time up to sixty (60) days after expiration or termination of this Agreement, the Customer may (on giving no less than twenty-four (24) hours prior written notice to the Service Provider) visit the Premises and examine any the Service Provider systems and records to ensure that the Service Provider no longer retains any Customer property that ought to have been returned to the Customer in accordance with Clause 20.6.
- 19.10. Expiration or termination of this Agreement shall not affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.
- 19.11. The provisions of this Clause 20 shall survive the continuance of this Agreement.

20. Assignment

- 20.1. This Agreement shall be binding on and endure for the benefit of the successors in title of the Parties.
- 20.2. Subject to Clauses 21.3, 21.4 and 21.5 below, neither Party may assign or transfer all or any of its rights or obligations under this Agreement in whole or in part without the prior written consent of the other Party.
- 20.3. The Service Provider may assign this Agreement to another person in the Service Provider Group and the rights under it with the prior written consent of the Customer and such written consent will not be unreasonably withheld as long as the assignee assumes all responsibilities contained in the MSA and Schedules, is capable of providing the Services and can meet the service levels specified in Schedule 2 of the MSA. Without prejudice to the generality of the foregoing provisions of this Clause 22, it shall be deemed reasonable for the Customer to withhold its consent to any assignment if in the Customer's

- reasonable opinion, the proposed assignee is either not financially viable or qualified to perform the same level of services as the Service Provider or is a competitor of the Customer.
- 20.4. Consent shall not be required for an assignment from the Customer to an Affiliate of Customer, provided the Customer shall notify the Service Provider in writing of such assignment. Where reasonably required, the Service Provider expressly declares its consent to such assignment and that it shall undertake any further confirmations and provide further assistance for a formal assignment.
- 20.5. In the event of a name change, merger, acquisition, amalgamation, consolidation, reorganization, divestiture, outsourcing of assets and/or processes, or sale of substantially all the assets of a member of the Customer Group, or in the event of the divestiture of an existing wholly-owned division or subsidiary during the Agreement Term (individually and collectively, the "Divested Entity"), the Divested Entity may, after written notice to the Service Provider, continue for a period of up to twelve (12) months to be a party to this Agreement as a new Party at no additional charge, provided that the Divested Entity agrees in writing to be bound by all of the terms and conditions of this Agreement. If requested by the Divested Entity, the Service Provider will offer to such Divested Entity or the new owner of such Divested Entity a direct agreement on similar terms to this Agreement, to the extent that this is relevant to such member.

21. Force Majeure

- 21.1. Subject to Clause 23.2 neither Party shall be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Agreement to the extent that such delay or non-performance is due to any cause beyond its reasonable control including but not limited to the acts, defaults or omissions of suppliers or strike, lockout or other form of industrial action (other than a strike, lockout or other form of industrial action of or by its own staff) (an "Event of Force Majeure").
- 21.2. The Party affected by any Event of Force Majeure shall use all reasonable endeavours to mitigate the effect of the Event of Force Majeure and shall immediately give the other Party written notification of the nature and extent of the Event of Force Majeure and the Parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 21.3. If the Service Provider is affected by an Event of Force Majeure and is unable to cure the effect of the Force Majeure within (10) days, the Customer may terminate this Agreement immediately on written notice and acquire an alternate service in replacement of the Services, without penalty, and the Customer shall be entitled to invoke the termination assistance provisions in Clause 20 and Schedule 1: Service Definition.
- 21.4. For the avoidance of doubt, this Clause shall not detract from the Service Provider's obligations relating to the implementation of disaster recovery and business continuity measures in Clause 13, and the Service Provider will only have a right to relief in terms of this Clause 23 after having invoked the DR Plans or where the invocation and scope of said DR Plans was not intended to cover the situation to which Force Majeure is being applied.

22. General

- 22.1. This Agreement sets out the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement.
- 22.2. The Parties acknowledge that they have entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement and, save as expressly set out in this Agreement, neither Party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.
- 22.3. To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed severed and not to be a part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 22.4. No purported variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the Parties.
- 22.5. The rights, powers and remedies conferred on any Party by this Agreement and remedies available to any Party are cumulative and are additional to any right, power or remedy which it may have under applicable law or otherwise.
- 22.6. Either Party may, in whole or in part, release, compound, compromise, waive, or postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement by the other Party without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed. No release, compound, compromise, waiver, or postponement of any liability owed to a Party or right granted in this Agreement shall be effective unless it is in writing and signed by or on behalf of the Party granting such release, compound, compromise, waiver, or postponement.
- 22.7. No single or partial exercise, or failure or delay in exercising any right, power or remedy by any Party shall constitute a waiver by that Party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.
- 22.8. Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to it. However, the Service Provider acknowledges that this Agreement and the Services are for the benefit of the members of the Customer Group and agrees that any loss or damage of whatever form and howsoever caused of any member of the Customer Group and which arise out of or in connection with the Services or this Agreement shall be deemed to be loss or damage of the Customer and the Service Provider shall raise no objection, defence or protest in respect thereof. Each member of the Customer Group shall be entitled to enforce the terms of this Agreement in its own right.
- 22.9. Each Party undertakes to promptly do all things and execute all further documents necessary to give full effect to this Agreement.
- 22.10. Nothing contained in this Agreement shall constitute or be deemed to constitute a partnership and none of the Parties shall be, or be construed to be, the agent of the other Party for any purpose or to have any authority to bind or incur any liability on behalf of any of the other Party, save as otherwise expressly provided in this Agreement.

23. Notices

- 23.1. Any notice to be given by a Party under this Agreement shall be:
- in writing;
 - signed by or on behalf of the Party giving it;
 - addressed to the Customer's Representative or the Service Provider Representative (as the case may be); and
 - delivered to the other Party personally or be left at or sent by prepaid first class post, prepaid recorded delivery or facsimile to, the address of the Party as set out on page 1 of this Agreement or as otherwise notified in writing from time to time.
- 23.2. Except as referred to in Clause 24.3 a notice shall be deemed to have been served:
- at the time of delivery if delivered personally;
 - two Business Days after posting in the case of an address in the United Kingdom and four Business Days after posting for any other address; or
 - two hours after receipt of an error-free transmission report if served by facsimile on a Business Day prior to 15:00 or in any other case at 10:00 on the Business Day after the date of despatch.
- 23.3. If the deemed time of service is not during normal business hours in the country of receipt, the notice shall be deemed served at the opening of business on the next Business Day of the country of receipt.
- 23.4. A Party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.

24. Governing Law and Jurisdiction

- 24.1. This Agreement shall be governed by and construed in accordance with English Law.
- 24.2. Each of the Parties irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.

25. Suspension of the Services

- 25.1. Upon written notice to the Customer (the notice period will be agreed between the Parties from time to time, but will not in any event be less than 10 Business Days), the Service Provider may suspend or limit the Services in order to improve or maintain the Services in accordance with the Service Levels.
- 25.2. Subject to clause 20 the Service Provider reserves the right at all times to suspend or limit the Services after the expiry or termination of this Agreement and/or given the Service Provider is entitled to terminate this Agreement.
- 25.3. The Service Provider reserves the right at all times to suspend or limit the Services:
- in the event the Customer prevents or delays the Service Provider in carrying out any of its obligations under this Agreement;
 - upon 10 Business Days notice where the Customer has breached any of the terms contained in this Agreement and has failed to rectify the breach after being notified by the Service Provider pursuant to clause 19.2; and/or
 - in the event the Service Provider has reasonable grounds for suspecting the Customer of using any part of the Services fraudulently, or attempting to do so, or of committing any other illegal or unlawful act in connection with the use of the Services.
- 25.4. The Service Provider, upon giving written notice to the Customer, may without liability, suspend forthwith provision of all or any of the Services until further written notice is given in the event that a court or other authority or regulator with jurisdiction over it and/or the Customer requires it to do so.
- 25.5. In the event that any of the Services are suspended pursuant to Clauses 27.2 or 27.3 or 27.4 or as a consequence of the act or omission of a User the Customer shall pay (in advance of commencement of the Services) all of the Service Provider's reasonable charges and expenses incurred in the implementation of such suspension and any subsequent commencement of the provision of any Services.

26. Dispute Resolution

- 26.1. Any dispute or difference between the Parties relating to this Agreement shall be dealt with as follows:

- the dispute shall first be referred to the Service Provider Representative and the Customer's Representative who shall promptly use all reasonable endeavours to resolve such matter as reasonably practicable;
 - if the Service Provider Representative and the Customer's Representative are unable or unwilling to resolve the matter between themselves, either of them may request a meeting of the Managing Director of the Service Provider and a senior representative of the Customer nominated by the Customer's Representative to be convened at the earliest practicable time;
 - if the matter is not resolved by agreement between the Parties within thirty (30) days after such meeting, the Parties may by agreement seek to settle the dispute by non-binding mediation with an accredited alternative dispute resolution practitioner, the cost of which shall be borne by both Parties equally.
 - During the dispute resolution process, the Service Provider must continue to provide uninterrupted Services to the Customer in accordance with this Agreement
- 26.2. Nothing in this Clause 28 shall have the effect of excluding either Party's right at any time to take up their remedies under law.

27. Insurance

- 27.1. The Service Provider will at its cost maintain in force throughout the Agreement Term, and for claims made after the Agreement Term in respect of events occurring during the Agreement Term, insurance to cover the following:
- Product Liability Insurance for the minimum amount of £5.0 million;
 - Professional Indemnity Insurance for the minimum amount of £3.0 million
 - Public Liability Insurance for the minimum amount of £5.0 million; and
 - Employers' Liability Insurance for the minimum amount of £10.0 million, and shall provide the Customer with copies of insurance certificates of the same if so requested.

28. Anti-Bribery

- 28.1. Both Parties agree to comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Anti-Bribery Law").

29. Dispute Resolution

- 29.1. The expiry or termination of this Agreement for any reason will not affect those provisions which are expressly or by implication to survive expiry or termination of this Agreement and those provisions shall continue in full force and effect.