

HALCYON DOCUMIGRATE ACCESS TERMS

1 Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

Agreement	the agreement formed between the Parties in accordance with Clause 2.1, comprising the Order Form, the Policies identified on the Order Form or the Customer Dashboard, these Access Terms, and any documents referred to in the Order Form, the Policies or these Access Terms;
Anti-Corruption and Bribery Policy	the Supplier's standard anti-corruption and bribery policy, available through the Customer Dashboard;
Applicable Data Protection Laws	means: (a) to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; (b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data;
Applicable Law	in respect of the exercise of any right or the performance of any obligation, all statutory and other laws, rules, regulations, instruments, orders and/or provisions in force from time to time that are applicable to such right or obligation;
Authorised Users	the Customer Authorised Users, the End Client Authorised Users, and the Third Party Authorised Users;
Availability Date	the date on which the Supplier makes the Initial Modules available through the Solution to the Customer for operational use;
Bespoke Material	any form, content, interface or other material developed by the Supplier on behalf of the Customer in the provision of the Services, or otherwise hosted by the Customer through the Solution specifically for the Customer;
Case	use of the Solution by the Customer in connection with the processing of a single immigration application for an individual (or any similar distinct legal matter) on behalf of an End Client, as more fully specified by the Supplier to the Customer in writing from time to time, including in the Fair Use Policy where applicable;
Change Control Process	the process for change control as set out in Clause 6;
Change Request	has the meaning set out in Clause 6.1;
Charges	all and any fees and charges payable by the Customer to the Supplier under or in connection with this Agreement, including those set out in the Order Form or available

through the Customer Dashboard;

Commencement Date	means the date when the Supplier notifies the Customer that the Supplier has accepted the Customer's application to access the Solution in accordance with the terms of this Agreement;
Confidential Information	any and all information of whatever nature disclosed directly or indirectly (whether before or after the date of this Agreement and whether given in writing, verbally or by any other means) by a Party to the other Party, including any information relating to its business affairs, customers, clients, suppliers, operations, plans or intentions, products and services including databases, software, internet and website products and services, technical information and data, financial information, business strategies, marketing and promotional information, analyses, documents, data, formulae, processes, designs, know-how, trade secrets and Intellectual Property Rights, which information is designated in writing to be confidential or proprietary, or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary;
Contract Year	the period of twelve months commencing on the Commencement Date and each successive period of 12 months commencing on an anniversary of the Commencement Date;
Control	shall be as defined in Sections 450 and 451(2) of the Corporation Tax Act 2010, and the term Change of Control shall be construed accordingly;
Customer Authorised Users	those employees or representatives of the Customer to whom the Customer allows access to the Solution in order to allow such person to act on behalf of the Customer in using the Solution;
Customer Content	any material provided by the Customer to the Supplier for incorporation into any Bespoke Material hosted through the Solution from time to time;
Customer Dashboard	the online dashboard available to the Customer through the Solution giving access to information about the Customer's account, and allowing the Customer to configure and operate the Solution;
Customer Data	any data entered into the Solution by an Authorised User, and any Output Data generated or obtained by an Authorised User through the Solution;
Customer Dependencies	performance of the obligations of the Customer under this Agreement, including all responsibilities allocated to the Customer under any relevant Statement of Work;
Customer Environment	the environment which the Customer or Authorised Users use with or to access and use the Solution, including any and all information technology communication links required by the Customer to facilitate the Customer's and Authorised Users' access to the Solution;

Customer Functionality	those parts of the Functionality, as identified in the Documentation, which are accessible to Customer Authorised Users from time to time;
Customer Personal Data	any Customer Data which constitutes personal data, and which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer;
Documentation	the electronic operating and user instructions relating to the Software and the Functionality, accessible via the Customer dashboard
End Client	a client or potential client of the Customer, to which the Customer permits access to the Solution for purposes of allowing such client or potential client to use the End Client Functionality;
End Client Authorised Users	those employees or representatives of an End Client to whom the Customer or the End Client allows access to the Solution in order to allow such person to act on behalf of the End Client in using the Solution;
End Client Functionality	those parts of the Functionality, as identified in the Documentation, which are accessible to End Client Authorised Users from time to time;
EU GDPR	the General Data Protection Regulation ((EU) 2016/679);
Event of Force Majeure	any cause preventing from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable contemplation and control of including, strikes, lockouts or other industrial disputes (whether involving the workforce of or otherwise) act of God, epidemic or pandemic, war, riot, civil commotion, civil emergency, radioactive, nuclear or chemical acts, malicious damage, cyber-attacks, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors;
Expert	subject to any relevant provisions of this Agreement, such independent expert as is: <ul style="list-style-type: none"> (a) agreed between the Parties; or (b) in the absence of such agreement within 10 Working Days, appointed by the National Computing Centre (or some other British nationally recognised independent centre for expertise in the application of computer technology and/or in the field of finance agreed by the Parties or in default of agreement appointed by the

President for the time being of the City of London Law Society);

Expert Determination Procedure	the procedure for the determination of a dispute set out in Clause 15;
Fair Use Policy	any policy setting out requirements for fair use of the Services as made available through the Customer Dashboard from time to time;
Functionality	the functions accessible to the respective classes of Authorised Users through the Software, comprising the functionality of the Initial Modules, and the functionality of any New Modules agreed between the Parties from time to time;
Good Industry Practice	the normal appropriate standards and practices that would be expected of a company within the relevant industry or business sector;
Hosting End User Agreement	such end user agreement in respect of the provision of hosting services in respect of the Solution as the Supplier notifies to the Customer from time to time;
Hosting Environment	the environment used by the Supplier to host the Solution;
Incident	a failure of Solution to operate substantially in accordance with the Documentation;
Initial Modules	the Modules comprised in the Solution as at the Commencement Date, and identified as such in the Order Form or through the Customer Database;
Intellectual Property Infringement	has the meaning set out in Clause 9.2;
Intellectual Property Rights	any and all copyrights, moral rights, related rights, patents, supplementary protection certificates, petty patents, utility models, trademarks, trade names, service marks, design rights, database rights, website rights, rights in software, semi-conductor topography rights, domain name rights, rights in undisclosed information or Confidential Information, rights in get up, goodwill or to sue for passing off, unfair competition rights, and other similar intellectual property rights (whether registered or not) and applications for any such rights as may exist anywhere in the world;
Interfacing Third Party	any third party with which the Customer or an End Client is able to interact in any way through the Solution, including the provider of any data source which the Customer or an End Client is able to interrogate through the Solution, and any authority or commercial entity with which the Customer or an End Client communicates or contracts through the Solution;
Liability Event	has the meaning set out in Clause 11.1;
Module	a set of functions comprising part of the overall functionality potentially available through access to the Software, the

functions available through each Module being as more specifically defined in the Documentation;

Month	the period from any day of the month in one calendar month to the end of the day preceding the same day of the month in the next calendar month;
New Module	a Module introduced into the Solution from time to time pursuant to the Change Control Procedure;
New Module Availability Date	the date on which the Supplier makes a New Module available through the Solution to the Customer for operational use;
Open Source Software	open source or free software as defined by the Open Source Initiative (http://opensource.org) or the Free Software Foundation (http://www.fsf.org);
Order Form	the online form completed by the Customer in submitting its request for access to the Solution, including a Request for a Demo Form, or, where applicable, the order form to which these Access Terms are attached;
Output Data	any data generated through the use of the Solution by an Authorised User, or obtained by an Authorised User from an Interfacing Third Party through the Solution;
Party	a party to this Agreement;
Payment Terms	the payment terms and payment milestones set out in the Order Form, the Customer Dashboard, or any relevant Statement of Work;
Permitted Purpose	in the case of the Customer, the provision of immigration services to its End Clients and the Customer's own internal business purposes, and in the case of each End Client, the receipt of immigration services from the Customer and the End Client's internal business purposes;
Professional Services	any services that the Supplier agrees in writing to provide from time to time, the particular details of which shall be set out in a Statement of Work;
Professional Services Fees	The Charges payable by the Customer from time to time for the Professional Services, as specified in the Order Form, the Customer Dashboard or the applicable Statement of Work;
Rates	the Supplier's standard rates for the provision of Professional Services in force from time to time;
Records	such reasonable records as the Supplier creates in the course of providing Support and/or Professional Services that solely and specifically relate to the Customer and which the Customer does not otherwise have in its possession or control but excluding any records which the Supplier deems are commercially sensitive, or any confidential information of a third party;

Regulator	any regulator or regulatory body to which the Customer is subject from time to time whose consent, approval or authority is required so that the Customer can lawfully carry on its business and which has authority to fine or impose a legally binding undertakings on the Customer;
Relationship Manager	the person appointed to act as such by each Party and notified to the other from time to time, as set out in the Order Form or updated through the Customer Dashboard from time to time;
Request for a Demo Form	the online form completed by the Customer in submitting its request for access to the Solution under the terms of a free trial offer;
Statement of Work	a document agreed between the parties in writing, which sets out the scope of Professional Services to be provided by the Supplier;
Service Fees	the Charges payable by the Customer, in respect of its access to the Solution, the details of which are set out in the Order Form, and updated through the Customer Dashboard from time to time;
Services	the supply of the Solution, together with the level of Support specified in the Order Form or on the Customer Dashboard, and the provision of the Professional Services specified in any Statement of Work agreed in writing between the Parties;
Software	Halcyon DocuMigrate, the online software application made available by the Supplier at https://admin.documigrate.com/ , which enables the Customer to collect, process, and temporarily store electronic documents as part of the process of providing immigration services to their End Clients;
Solution	the right to access the Software and the Documentation in order to use the Functionality, each in accordance with the Access Terms;
Support	the package of support services identified in Schedule 1;
Support Hour	the period of one hour during the Working Hours;
Tax	any present or future taxes, levies, imposts, duties, charges, fees or other deductions or withholding of any nature, or any amount payable on account of or as security for any of the foregoing, payable at the instance of or imposed by any statutory, governmental, international, state, federal, provincial, local or municipal authority, agency, body or department whatsoever or any central bank or monetary agency or European Community institution, in each case whether in the United Kingdom or elsewhere, together with any penalties, fines, surcharges or interest relating thereto, and Taxes and Taxation shall be construed accordingly;
Term	the period from the Commencement Date up to the date with effect on which this Agreement is terminated in

	accordance with its terms;
Third Party Authorised Users	any individual other than a Customer Authorised User or an End Client Authorised User to whom the Customer or an End Client allows access to the Solution;
Third Party Software	any software owned by a third party and made available by the Supplier to the Customer for use in connection with the Solution;
Trial Usage	any use of the Solution made available by the Supplier in respect of specified Cases that is made available on a free of charge basis pursuant to a Request for a Demo Form;
UK GDPR	has the meaning given to it in the Data Protection Act 2018;
VAT	value added tax chargeable under the Value Added Tax Act 1994;
Virus	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;
Working Day	any day other than a Saturday, Sunday or public holiday in England when the clearing banks in the City of London are open for business;
Working Hours	the period from 09:00 to 17:00 on any Working Day (UK time).

1.2 In this Agreement, a reference to:

- 1.2.1 a **person** includes a natural person, company, LLP, corporate, partnership, trusts, unincorporated bodies and that persons personal representatives, successors and permitted assigns;
- 1.2.2 the **singular** includes the plural and vice versa, and to the **masculine** shall include the feminine and neuter and vice versa;
- 1.2.3 a **Clause** or **Schedule** is to a clause or schedule of these Access Terms respectively and the Schedules form part of and are incorporated into this Agreement;
- 1.2.4 a **statute** or **statutory provision** is a reference to it as amended, extended or re-enacted from time to time and such statute or statutory provision shall include all subordinate legislation made from time to time under that statue or statutory provision;
- 1.2.5 **writing** or **written** includes email but not fax;
- 1.2.6 an **English legal term** for any action, remedy, method of judicial proceeding, legal

document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction; and

- 1.2.7 any times of day shall refer to the relevant time in the UK .
- 1.3 The headings in this Agreement are included for convenience only and shall not affect its interpretation or construction.
- 1.4 Any words following the terms **include, including, in particular, for example** or anything similar are illustrative only and none of them shall limit the sense of the words, description, definition, phrase or term preceding those terms and each of them shall be deemed to incorporate the expression **without limitation**.
- 1.5 For the purpose of this Agreement the terms **controller, processor, data subject, personal data, personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 1.6 Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.
- 1.7 If there is any conflict or ambiguity between the terms of the documents listed below, a term contained in a document higher in the list shall have priority over a term contained in a document lower in the list:
 - 1.7.1 the Order Form;
 - 1.7.2 the Schedules;
 - 1.7.3 these Access Terms; and
 - 1.7.4 any document incorporated into the Agreement by reference.

2 Agreement and Term

- 2.1 This Agreement is made on the Commencement Date and shall continue in effect, subject to earlier termination, until the Supplier gives the Customer notice of withdrawal of access to the Solution, which the Supplier may give on one month's notice:
 - 2.1.1 at any time, where the Customer's only use of the Solution has been Trial Usage; or
 - 2.1.2 not sooner than twelve months after the Customer's latest submission of an order for the purchase of Cases, in the case of a Customer that has purchased Cases.
- 2.2 The terms of this Agreement apply to the arrangements which are the subject matter of this Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 Supply of the Services

- 3.1 Subject to the Customer paying the Charges due from time to time and fulfilling the Customer Dependencies, and subject to the other terms and conditions of this Agreement, the Supplier shall:
 - 3.1.1 configure the Solution for the Customer, create the Customer's organisation level account and provide access details for the Customer Authorised Users;

- 3.1.2 grant to the Customer a non-exclusive, non-transferable licence, without the right to grant sub-licences, to permit:
 - 3.1.3 the Customer Authorised Users to access and use the Solution from the Commencement Date, for the purposes of, and to the extent necessary for, the fulfilment of the Customer Dependencies only; and
 - 3.1.4 the Authorised Users to access and use the Solution from the Availability Date (or, as applicable, the New Module Availability Date in respect of any New Module) for the Permitted Purpose only;
 - 3.1.5 use reasonable endeavours, with effect from the Availability Date and thereafter during the Term, to make the Solution available 24 hours a day, seven days a week, except for:
 - 3.1.6 planned maintenance carried out during the maintenance window of 10.00 pm to 5.00 am; and
 - 3.1.7 unscheduled maintenance performed outside Working Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 8 Working Hours' notice in advance;
 - 3.1.8 provide the Support with effect from the Availability Date; and
 - 3.1.9 provide any Professional Services as from the date specified in the Order Form or the relevant Statement of Work for the supply of those Professional Services.
- 3.2 The Supplier shall:
- 3.2.1 provide the Services:
 - 3.2.2 in accordance with this Agreement in all material respects; and
 - 3.2.3 in accordance with the requirements of any Applicable Law;
 - 3.2.4 comply with its other responsibilities and obligations set out in this Agreement; and
 - 3.2.5 appoint a Relationship Manager who will have authority to contractually bind the Supplier on all matters relating to this Agreement and use its reasonable endeavours to ensure the continuity of its Relationship Manager. Notwithstanding the foregoing, the Supplier shall be entitled to change its Relationship Manager and shall provide notice to the Customer of any such change.
- 3.3 The Supplier may make changes to the Solution, the Hosting Environment, the Documentation and the Services:
- 3.3.1 where the Supplier deems such changes necessary to comply with any Applicable Law; and
 - 3.3.2 where such changes will not materially affect the nature or quality of the Solution or the Services.
- 3.4 The Customer acknowledges that:
- 3.4.1 the Solution may enable or assist the Customer to access the website content of, communicate with, enter into transactions with, and/or obtain Customer Data from, Interfacing Third Parties;
 - 3.4.2 the Customer is solely responsible for its relationship (contractual or otherwise) with

the Interfacing Third Parties, and for fulfilling its duties and obligations in respect of the Interfacing Third Parties; and

- 3.4.3 the Supplier makes no representation, warranty or commitment, and shall have no liability whatsoever:
- (a) in relation to the Customer's correspondence, transactions or other dealings with Interfacing Third Parties; or
 - (b) in respect of the accuracy or completeness of any Customer Data obtained from Interfacing Third Parties, or
 - (c) in respect of the legal grounds for any processing activities undertaken by the Customer through the Solution in respect of personal data comprised within such Customer Data;

and recommends that the Customer, where applicable, refers to the website terms and conditions, privacy policy and other relevant documentation of the Interfacing Third Party prior to entering into any dealings with such Interfacing Third Party.

3.5 The Customer acknowledges that the Software incorporates Open Source Software and Third Party Software and that the use of the Software, may be subject to additional terms associated with the use of such Open Source Software and Third Party Software, which the Customer agrees to comply with, and therefore any breach by the Customer of such terms shall be a breach of this Agreement.

3.6 The Customer shall indemnify and hold the Supplier harmless against any loss or damage which the Supplier may suffer or incur as a result of:

- 3.6.1 any claim brought against the Supplier by an Interfacing Third Party arising out of or in connection with any act or omission of the Customer; or
- 3.6.2 the Customer's breach of any additional terms relating to Open Source Software and Third Party Software of the type referred to in Clause 3.5.

3.7 The Supplier shall be entitled to monitor and audit the use of the Solution by the Customer and each Authorised User in order to monitor compliance with the terms of this Agreement and to calculate the Charges that the Customer has incurred.

3.8 The Customer acknowledges that the Supplier hosts the Solution, and any Customer Data stored using the Solution from time to time, in the Hosting Environment, and that nothing in this Agreement shall oblige the Supplier to install the Software on any server outside the Hosting Environment.

4 Customer Obligations

4.1 The Customer:

- 4.1.1 shall ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time, and, to the extent permitted by law and except as otherwise expressly provided in this Agreement;
- 4.1.2 shall implement and operate appropriate up-to date IT security, including anti-virus / anti-malware software and vulnerability management, within its network and systems;
- 4.1.3 shall be solely responsible for procuring, maintaining and securing the network connections and telecommunications links from its systems to the Supplier's Hosting

Environment; and

- 4.1.4 acknowledges that the Supplier has no liability for any problems, conditions, delays, delivery failures or other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

4.2 The Customer shall:

- 4.2.1 appoint a Relationship Manager who will have authority to contractually bind the Customer on all matters relating to this Agreement and use its reasonable endeavours to ensure the continuity of its Relationship Manager. Notwithstanding the foregoing, the Customer shall be entitled to change its Relationship Manager and shall provide notice to the Supplier of any changes to the same;
- 4.2.2 procure that its employees, agents and representatives, including in particular the Authorised Users, co-operate with the Supplier on all matters relating to this Agreement, the configuration of the Solution and the supply of the Services;
- 4.2.3 provide to the Supplier and such of its employees, agents, contractors and subcontractors as the Supplier deems necessary, in a timely manner and at no charge, access to the Customer Environment (including software interfaces of the Customer's other business applications) and other facilities as may reasonably be required by the Supplier in connection with this Agreement and in particular in order for the Supplier to provide Services;
- 4.2.4 inform the Supplier of all health and safety and security requirements that apply at the Customer's premises;
- 4.2.5 use all reasonable endeavours to prevent any unauthorised access to, or use of, the Solution and notify the Supplier promptly of any such unauthorised access or use;
- 4.2.6 maintain, and procure that its Authorised Users maintain, the confidentiality of all passwords and any login credentials issued by the Customer to access the Solution;
- 4.2.7 maintain full and accurate copies of all Customer Data, ensuring that any Customer Data stored through the Solution from time to time is backed up securely to an independent storage location;
- 4.2.8 use the Solution only for its intended purpose of managing immigration cases for individuals, and in accordance with any Fair Use Policy specified by the Supplier from time to time – the Supplier shall be entitled to determine whether any usage constitutes fair use of the Solution;
- 4.2.9 without affecting its other obligations under this Agreement, comply with all Applicable Law which applies to the Customer in connection with this Agreement;
- 4.2.10 obtain and maintain all necessary licences, consents and permissions necessary to enable the Supplier to provide, and the Customer to enjoy the benefit of, the Services;
- 4.2.11 comply with its other responsibilities and obligations set out in this Agreement in a timely and efficient manner.

4.3 In relation to the Authorised Users, the Customer undertakes that it shall:

- 4.3.1 ensure that all Authorised Users shall comply at all times with the obligations required under the Hosting End User Agreement (as applicable to the Customer and the Authorised User) as set out therein;

- 4.3.2 allow only Authorised Users to access and use the Solution and the Support;
 - 4.3.3 ensure that any Authorised Users accessing and using the Solution or the Support do so in accordance with the terms and conditions of this Agreement, including the Fair Use Policy and shall be responsible for any Authorised User's breach of this Agreement;
 - 4.3.4 not allow or suffer any password or login credentials allocated to a particular Authorised User to be used by any other person unless the same has been reassigned in its entirety by the Customer to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Solution or the Support;
 - 4.3.5 ensure that all Authorised Users have the required skills, training and expertise in accordance with Good industry Practice to use the Solution.
- 4.4 The Customer shall not, and shall procure that Authorised Users shall not, store through the Solution, nor access, store, distribute, transmit, upload or allow to be uploaded to or through the Solution any material that:
- 4.4.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; and/or
 - 4.4.2 facilitates illegal activity, depicts sexually explicit images, promotes unlawful violence or is discriminatory; and/or
 - 4.4.3 is discriminatory based on race, gender, colour, religious belief, sexual orientation of disability; and/or
 - 4.4.4 is in a manner that is otherwise illegal or causes damage or injury to any person or property; and/or
 - 4.4.5 contains any Viruses.
- 4.5 The Customer shall not, and shall procure that Authorised Users shall not:
- 4.5.1 except as may be allowed by any Applicable Law incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under this Agreement:
 - 4.5.2 attempt to copy, duplicate, modify, create derivative works from, frame, mirror republish, download, display, transmit or distribute all or any portion of the Solution in any form or media or by any means; or
 - 4.5.3 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Solution;
 - 4.5.4 access or use the Solution for any purpose other than the Permitted Purpose;
 - 4.5.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or otherwise make the Solution available to any third party except Authorised Users;
 - 4.5.6 attempt to obtain, or assist third parties in obtaining, access to the Solution; or
 - 4.5.7 require the Supplier to process any data in any manner where the Customer does not have the necessary rights, licences or consents to permit the Supplier to process such data in such manner;

and the Supplier reserves the right, without liability to the Customer or prejudice to the Supplier's other rights, to disable the Customer's access to the Solution if the provisions of this Clause 4.5 are breached.

- 4.6 Upon the request of the Supplier, the Customer shall suspend entry or processing of data and shall, if it is reasonably necessary to maintain the integrity of the Customer Data, enter or re-enter data and use backed-up versions of data.

5 Charges and Payment Provisions

- 5.1 The Supplier shall be entitled to issue its invoices for the Charges in accordance with the Order Form or the relevant Statement of Work or, if not specified in the Order Form or the relevant Statement of Work:

5.1.1 in respect of the Service Fees, immediately on the Customer's submission of an order for access to the Solution in respect of a specified number of Cases;

5.1.2 in respect of Professional Services, upon completion of the Professional Services to which the invoice relates or, at the Supplier's option, on a monthly interim basis.

- 5.2 The Customer shall pay the Charges in accordance with the Payment Terms.

- 5.3 All sums payable to the Supplier under this Agreement:

5.3.1 are exclusive of VAT or any similar Tax that the Supplier is required to apply to the Charges which shall be payable at the rate and in the manner for the time being prescribed by Applicable Law;

5.3.2 shall be paid in full without any set off, counterclaim, deduction or withholding and unless stated otherwise in the Order Form or this Agreement, shall be paid within 30 days of the Supplier's invoice for the same; and

5.3.3 shall be non-refundable.

- 5.4 If any sums payable under this Agreement are not paid by their due date then, without prejudice to the other rights and remedies of, the Supplier reserves the right to charge interest on such sum on a daily basis (both before and after judgement) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 4% per annum above the base rate from time to time of the Bank of England or 8% per annum, whichever is the higher, compounded quarterly. Such interest shall be paid on demand of the Supplier.

- 5.5 All amounts due under this Agreement shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of Tax as required by Applicable Law) and the Customer shall not be entitled to assert any credit, set off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.

- 5.6 The Supplier shall be entitled to set-off any sums due to it under this Agreement against any sum due to the Customer under this Agreement.

6 Change Control Process

- 6.1 If following the Commencement Date, the Customer requires Professional Services or wishes to request a change to the Solution, the scope of the Professional Services or Support being provided by the Supplier, it shall submit details of its request in writing to the Supplier (a **Change Request**).

- 6.2 In respect of each Change Request, the Supplier shall, within a reasonable period of time, provide a written estimate to the Customer of:
- 6.2.1 the likely time required to implement the change;
 - 6.2.2 the Charges payable for implementing the change including, where applicable, the Charges for any Professional Services provided by the Supplier in implementing such change, calculated on the basis of the Rates;
 - 6.2.3 the timetable or dates and times (as applicable) for the provision of the Professional Services;
 - 6.2.4 any other variations to the Charges;
 - 6.2.5 the impact (if any) of the change on the Solution; and
 - 6.2.6 any other impact of the change on the terms of this Agreement;
- and a draft Statement of Work for such Professional Services.
- 6.3 If the Supplier requests a change to the scope of the Solution the Customer shall not unreasonably withhold or delay its consent to the same.
- 6.4 If the Customer wishes the Supplier to proceed with the Change Request, the Supplier has no obligation to do so unless and until the Parties have agreed, in writing: a Statement of Work, the Professional Services Fees (if applicable) and the necessary variations to the Charges and any other relevant terms of this Agreement to take account of the change and any such Professional Services shall be provided subject to and in accordance with the terms of this Agreement.

7 Data Protection

- 7.1 If and to the extent that the provision of the Solution, Professional Services or Support requires the Supplier to process any personal data on behalf of the Customer, the provisions set out in this Clause 7 shall govern such processing.
- 7.2 The Customer shall own all right, title and interest in and to all of the Customer Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such Customer Personal Data.
- 7.3 Both Parties shall during the term of this Agreement, comply with their respective obligations under the Applicable Data Protection Laws. This Clause 7 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Applicable Data Protection Laws.
- 7.4 The Parties acknowledge that:
- 7.4.1 if the Supplier processes any Customer Personal Data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and the Supplier is the processor for the purposes of the Applicable Data Protection Laws; and
 - 7.4.2 **Error! Reference source not found.** sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 7.5 Without prejudice to the generality of Clause 7.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer

Personal Data to the Supplier for the duration and purposes of this Agreement so that the Supplier may lawfully use, process and transfer the Customer Personal Data in accordance with this Agreement on the Customer's behalf.

7.6 The Supplier shall, in relation to any Customer Personal Data processed by the Supplier in connection with the performance of its obligations under this Agreement:

7.6.1 process that Customer Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Law to otherwise process that Customer Personal Data (**Purpose**). Where the Supplier is relying on Applicable Law as the basis for processing Customer Personal Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Law unless those Applicable Law prohibits the Supplier from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;

7.6.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

7.6.3 ensure that those employees of the Supplier who have access to, and process Customer Personal Data are obliged to keep it confidential;

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

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

7.6.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination or expiry of this Agreement unless required by Applicable Law to store the Customer Personal Data; and

7.6.7 maintain complete and accurate records and information to demonstrate its compliance with this Clause 7 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Applicable Data Protection Laws.

7.7 The Customer hereby provides its prior general authorisation for the Supplier to:

7.7.1 appoint third parties as third-party processors of the Customer Personal Data. The Supplier confirms that it has or will have entered into an agreement with the third parties on the terms, which incorporate substantially the same terms to those set out in this Clause 7. As between the Supplier and the Customer, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it;

7.7.2 transfer Customer Personal Data outside of the UK as required for the Purpose,

provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

7.8 Either Party may, at any time on not less than 30 days' notice, revise this Clause 7 by replacing it with any applicable controller to processor standard agreement or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

8 Warranties

8.1 Subject to the exceptions set out in Clause 8 and the limitations on its liability in Clause 11, the Supplier warrants:

8.1.1 it has the right, power and authority to license the Solution upon the terms and conditions of this Agreement;

8.1.2 the licenses attached to the Open Source Software permit such Open Source Software to be integrated into the Solution;

8.1.3 the Solution will operate substantially in accordance with the Documentation;

8.1.4 it will perform the Professional Services and Support with reasonable care and skill and in accordance with Good Industry Practice;

8.1.5 no enhancement to the Solution will materially remove or reduce functionality used by the Customer, save where such reduction or removal arises as a result of a change in Applicable Law, in which case, the Supplier shall use its reasonable endeavours to provide not less than 20 Working Days' notice of such change.

8.2 The Customer shall give notice to the Supplier as soon as it is reasonably able upon becoming aware of a breach of warranty.

8.3 Subject to Clause 8.4, in the event that the Customer discovers a material defect with the Solution which substantially affects the Customer's use of the Solution on the terms of this Agreement and notifies the Supplier with full details of the defect, the Supplier shall use reasonable endeavours to correct such defect within a reasonable period of time.

8.4 Notwithstanding anything to the contrary in this Agreement, the Supplier shall have no liability to remedy a breach of warranty where such breach arises as a result of any failure on the part of the Customer to observe and perform its obligations under this Agreement.

8.5 The Customer acknowledges and accepts that:

8.5.1 the Supplier does not warrant or guarantee that the Solution will meet the Customer's data processing requirements and the Customer agrees that the existence of Incidents shall not automatically constitute a breach of warranty or this Agreement;

8.5.2 the Supplier does not warrant or guarantee the accuracy or completeness of Output Data as the Output Data is dependent on the Authorised User's use of the Solution and the data stored in the Solution;

8.5.3 computers need routine maintenance and sometimes break down and accordingly

the Solution may not operate continuously and in an error-free manner. As a result, the Supplier does not guarantee to anyone that the Customer, or Authorised Users will be able to access the Solution or any part thereof at any particular time and the Customer agrees that the Supplier shall have no liability to the Customer if any such persons are temporarily not able to access the Solution at such time;

- 8.5.4 computer software including the Solution, is not error, fault or bug free, nor secure from persons wishing to misuse, tamper with, erase, alter or in any other way corrupt computer systems and that the data, information and records they display, retrieve, collate, transfer, calculate or disseminate may be affected by such occurrences;
 - 8.5.5 the Solution was not designed and produced to the Customer's individual requirements and that the Customer was responsible for its selection; and
 - 8.5.6 the Solution is provided to the Customer on an "as is" and "as available" basis;
 - 8.5.7 the Solution is provided as a tool to aid the Customer's business but should not be relied upon in a business critical manner;
 - 8.5.8 the Supplier cannot and does not warrant that the Customer's use of the Solution will ensure its compliance with any requirements of a Regulator, or any Applicable Law from time to time and the Customer is responsible for such compliance.
- 8.6 Subject to the foregoing, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the Solution, the Documentation, the Professional Services, Support and Output Data are hereby excluded to the fullest extent permitted by Applicable Law.

9 Intellectual Property Rights

- 9.1 The Customer agrees and acknowledges that the Supplier and/or its licensors own all Intellectual Property Rights in the Solution (including the Documentation). Except as expressly set out in this Agreement, this Agreement does not grant the Customer any rights to, or in, any Intellectual Property Rights in respect of the Solution or Documentation.
- 9.2 Subject to Clause 9.4, the Supplier will indemnify and hold harmless the Customer on an indemnity basis only against any damages (including reasonable costs) that are awarded, or which become payable by the Customer to any third party in respect of any claim or action that the use of the Solution by the Customer in accordance with this Agreement infringes the Intellectual Property Rights of any third party (an **Intellectual Property Infringement**) provided that the Customer:
 - 9.2.1 immediately notifies the Supplier of any suspected Intellectual Property Infringement;
 - 9.2.2 subject to Clause 9.5, gives the Supplier the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the Supplier; and
 - 9.2.3 acts in accordance with the reasonable instructions of the Supplier and gives to the Supplier such assistance, as it shall reasonably require in respect of the conduct of the said defence including without prejudice to the generality of the foregoing the filing of all pleadings and other court process and the provision of all relevant documents.
- 9.3 The Supplier shall reimburse the Customer its reasonable costs incurred in complying with the provisions of Clause 9.2.3.

- 9.4 The Supplier shall have no liability to the Customer in respect of an Intellectual Property Infringement if and to the extent the same results from:
- 9.4.1 any breach by the Customer or an Authorised User of this Agreement;
 - 9.4.2 the Customer's negligence or wilful misconduct;
 - 9.4.3 the Supplier's use of any Customer Content in accordance with the terms of this Agreement;
 - 9.4.4 Open Source Software to the extent that the Supplier has complied with the applicable licence for the same; or
 - 9.4.5 the combination, linking or incorporation of the Solution with any third party hardware, software or services.
- 9.5 In the event of an Intellectual Property Infringement the Supplier shall be entitled at its own expense and option either to:
- 9.5.1 procure the right for the Customer to continue using Solution; or
 - 9.5.2 make such alterations, modifications, adjustments or substitutions to the Solution so that it becomes non-infringing without incurring a material diminution in performance or functionality.
- 9.6 If the Supplier in its reasonable judgment is not able to exercise any of the options set out in Clause 9.5 within three months of the date it received notice of the Intellectual Property Infringement, then the Supplier without prejudice to any other rights or remedies it may have hereunder shall be entitled to terminate this Agreement by 30 days notice in writing to the Customer.
- 9.7 This Clause 9 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents', contractors', and sub-contractors') entire obligations and liability, for any Intellectual Property Infringement.
- 9.8 The Customer acknowledges that any Open Source Software incorporated into Solution by the Supplier is provided "as is" and expressly subject to the disclaimer in Clause 8.6.
- 9.9 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim by a third party alleging that use of all or any part of the Customer Data, or use of any Customer Content, infringes any Intellectual Property Rights of such third party.
- 9.10 The Customer hereby grants to the Supplier a royalty free, non-exclusive, non-transferable licence during the Term to use any Intellectual Property Rights in the Customer Content, and the trade marks or trade names used by the Customer in connection with the Customer's business, solely to the extent necessary for providing the Solution, Support and Professional Services in accordance with this Agreement.

10 Confidentiality

- 10.1 Each Party may be given access to Confidential Information by the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:

- 10.1.1 is or becomes publicly known other than through any act or omission of the receiving Party;
 - 10.1.2 was in the other Party's lawful possession before the disclosure;
 - 10.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;
 - 10.1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence; or
 - 10.1.5 is required to be disclosed by any Applicable Law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by Applicable Law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the for the purposes envisaged by this Agreement.
- 10.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 10.4 Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5 The Customer acknowledges that details of the Solution and the results of any performance tests of the Solution, and outcomes of the Professional Services constitute the Supplier's Confidential Information.
- 10.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

11 Limitation of Liability

- 11.1 The following provisions set out the entire liability of the Supplier (including any liability for the acts and omissions of its employees, agents, representatives and sub-contractors) in respect of:
- 11.1.1 any breach of its contractual obligations arising under or in connection with this Agreement;
 - 11.1.2 any use made by the Customer of the Solution, the Professional Services, Support and the Documentation or any part of them;
 - 11.1.3 any mis-representation, mis-statement or tortious act or omission including negligence but excluding any of the same made fraudulently arising under or in connection with this Agreement;
 - 11.1.4 any other provision of this Agreement;
- (a **Liability Event**).
- 11.2 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall limit or exclude the liability of the Supplier:
- 11.2.1 for death or personal injury resulting from its own negligence or that of its representatives;

- 11.2.2 for fraud or fraudulent misrepresentation; or
 - 11.2.3 to the extent that such liability or exclusion is not permitted by law.
- 11.3 The Customer is responsible for:
- 11.3.1 all Output Data and results obtained and conclusions drawn from the Output Data and use of the Solution, Documentation, Professional Services, or Support by the Customer and Authorised Users; and
 - 11.3.2 all data extraction and migration save to the extent provided by the Supplier as part of any configuration activity or Professional Services to be provided by the Supplier from time to time; and
 - 11.3.3 undertaking data integration tests and collating Output Data to verify that the Output Data is complete and accurate.
- 11.4 Subject to Clause 11.2, the total liability of the Supplier in respect of:
- 11.4.1 all Liability Events arising in relation to a Statement of Work and all Professional Services provided or to be provided pursuant that Statement of Work shall be limited to 100% of the Professional Service Charges paid for such Professional Services; and
 - 11.4.2 all other Liability Events arising in relation to the Solution, Support or otherwise under this Agreement shall in any Contract Year be limited to an amount equal to 100% of the Service Fees that have been paid to the Supplier in respect of the immediately preceding Contract Year or, in respect of the first Contract Year, the Service Fees paid to the Supplier in respect of that Contract Year.
- 11.5 Subject to Clause 11.2, the Supplier shall not be liable to the Customer in respect of any Liability Events for any loss or damage which may be suffered by the Customer (or any person claiming through or under the Customer) whether the same are suffered directly or indirectly whether the same arise in contract tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- 11.5.1 loss of profits;
 - 11.5.2 loss of turnover;
 - 11.5.3 loss of anticipated savings;
 - 11.5.4 loss of business opportunity;
 - 11.5.5 loss of goodwill;
 - 11.5.6 loss or corruption of data;
 - 11.5.7 damage to reputation; or
 - 11.5.8 any special, indirect or consequential loss;
- or for any Liability Event arising from any Trial Usage of the Solution
- 11.6 The Supplier shall not be liable for any damage or losses to the extent they arise result of or in connection with:
- 11.6.1 any failure of the Customer to observe and perform its obligations under this Agreement or a Statement of Work or a breach by the Customer or an Authorised

User of this Agreement;

- 11.6.2 any unauthorised or incorrect access or use of the Solution, Support or Professional Services or use other than in accordance with the terms of this Agreement or 's instructions;
 - 11.6.3 problems caused by the Customer Environment;
 - 11.6.4 any modification or alteration of the Solution by any party other than the Supplier;
 - 11.6.5 errors or omissions to the extent they are based on and/or relate to the information or instructions provided by the Customer or its employees, agents or representatives to the Supplier; or
 - 11.6.6 any actions taken by the Supplier at the Customer's discretion; or
 - 11.6.7 the Customer's use of the Solution after the Customer became or should have become aware of an Incident but before the Supplier has confirmed that a resolution has been implemented.
- 11.7 If at any time the Customer's operational requirements of the Solution exceeds the operational capabilities of the same, including storage capacity to be provided as part of the Hosting Environment, then the Customer acknowledges that it may have an adverse impact on the capability, functionality and/or performance of the Solution and as a result the Supplier shall not be liable to the Customer for any loss or damage arising in respect of such impact on the capability, functionality and/or performance of the Solution.
- 11.8 If a number of Liability Events of Default give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under this Agreement.
- 11.9 The Supplier shall have no liability to the Customer in respect of any Liability Event unless the Customer shall have served notice of the same upon the Supplier within 3 months of the date the Customer became aware or ought to have become aware of the consequences of the Liability Event.
- 11.10 All references to "the Supplier" in this Clause 11 shall, for the purposes of this Clause 11 and Clause 20.6 only, be treated as including all employees, subcontractors and suppliers of the Supplier, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 20.6
- 11.11 The Customer declares and acknowledges that it has considered the provisions of this Clause 11 in detail including each of the limitations on liability contained in Clauses 11.3 to 11.10 (inclusive) and considers them reasonable in the circumstances having taken into account among other factors the subject matter of this Agreement and having obtained or had the opportunity to obtain independent legal advice on the same.

12 Term and Termination

- 12.1 If the Customer fails to pay any Charges within 5 Working Days of their due date for payment or if the Supplier is otherwise entitled to terminate this Agreement in accordance with Clauses 12.2 or 12.3, the Supplier shall have, without prejudice to any of its other rights and remedies, the option, at its sole discretion, by giving written notice to the Customer, to immediately:
- 12.1.1 restrict or suspend the Customer's access to the Solution, Professional Services and Support forthwith until such Charges, together with accrued interest payable thereon, have been received in clear funds by the Supplier; or
 - 12.1.2 terminate this Agreement forthwith.

- 12.2 Save where it relates to Professional Services, in which case Clause 12.4 shall apply, without affecting any other right or remedy available to it, either Party may terminate this Agreement:
- 12.2.1 with immediate effect (or following such notice period as that Party sees fit) by giving written notice to the other Party if
 - 12.2.2 the other Party commits any material breach of any term of this Agreement which is not capable of remedy; or
 - 12.2.3 the other Party commits a material breach of any form of this Agreement which is capable of remedy, and fails to remedy the same within 30 days of a written notice giving particulars of the breach and requiring it to be remedied; or
 - 12.2.4 in accordance with Clause 19.3;
 - 12.2.5 in the case of the Supplier, in accordance with Clause 9.6.
- 12.3 Without affecting any other right or remedy available to the Supplier, the Supplier may terminate this Agreement with immediate effect (of following such notice period as the Supplier sees fit) by giving written notice to the Customer if:
- 12.3.1 the Customer makes a proposal for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors generally or if the Customer is unable to pay its debts as they fall due within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrator, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Customer or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);
 - 12.3.2 the Customer ceases to carry on its business or substantially the whole of its business or threatens to do any of the same;
 - 12.3.3 if any event analogous to that set out in Clauses 12.3.2 shall occur in any jurisdiction in which the Customer is incorporated or resident or carries on business;
 - 12.3.4 there is a Change in Control of the Customer.
- 12.4 Either Party may terminate a Statement of Work and the Professional Services to be supplied pursuant to that Statement of Work with immediate effect (or following such notice period as that Party sees fit) by giving written notice to the other Party if the other Party commits any material breach of any term of this Agreement relating to the Professional Services to be provided which is not capable of remedy or if capable of remedy, fails to remedy the same within 30 days of a written notice from the other Party giving particulars of the breach and requiring it to be remedied provided always that any termination of a Statement of Work shall not terminate this Agreement or any other Statement of Work which shall continue in full force and effect notwithstanding the termination of the particular Statement of Work.

13 Consequences of Termination

13.1 Other than as set out in this Clause 13, neither Party shall have any further obligation to the other under this Agreement after its termination.

13.2 On termination or expiry of this Agreement:

13.2.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding

unpaid invoices and interest and, in respect of any period in which the Solution, Support and/or Professional Services have been supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

- 13.2.2 all licences and rights granted under this Agreement shall immediately terminate;
- 13.2.3 each Party shall as soon as reasonably practicable, return or destroy as directed in writing by the other Party any documents in its possession or control which contain or record any Confidential Information of the Party and shall if required by the other Party provide the other Party with written evidence in the form of a letter signed by a director within 10 Working Days of such request that the same have been destroyed;
- 13.2.4 the Supplier may take such steps as it deems necessary to ensure that the Customer and none of its employees or Contractors can access or use Solution;
- 13.2.5 unless the Supplier has terminated this Agreement pursuant to Clauses 12.1.2, 12.2 or 12.3, subject to the Customer:
- 13.2.6 entering into an agreement with the Supplier on the Supplier's standard terms;
- 13.2.7 paying the Supplier's Charges in respect of the provision of such Professional Services (such Charges to be calculated on the basis of the Rates); and
- 13.2.8 providing such co-operation as reasonably required by the Supplier;

the Supplier shall provide such Professional Services as are agreed between the Parties to extract the Customer Data from the Solution and provide this to the Customer in a standard readable format.

- 13.3 The Customer acknowledges that notwithstanding Clause 13.2.5, the Supplier shall have the right to delete any Customer Data in its possession or control within 30 days of the date of termination or expiry of this Agreement.
- 13.4 The termination of this Agreement howsoever arising shall be without prejudice to any other rights or remedies a Party may be entitled to under this Agreement or at Law and shall not affect the accrued rights, obligations or liabilities of either Party nor the coming into or continuance in force of any provision of this Agreement, which is expressly or by implication, intended to come into or continue in force on or after such termination.

14 Anti-Bribery and Modern Slavery

- 14.1 Each Party warrants and represents to the other Party that:
 - 14.1.1 in the negotiation of this Agreement, it has complied with all Applicable Laws and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010;
 - 14.1.2 it has and will maintain in place at all times procedures under the Bribery Act 2010 to ensure continued compliance with the Bribery Act 2010 and will enforce those procedures where appropriate; and
 - 14.1.3 it will promptly report to the other Party any request or demand for or offer of any undue financial or other advantage of any kind received by it in connection with this Agreement.
- 14.2 The Parties agree that a breach of Clause 14.1 shall be deemed to be a material breach of

this Agreement.

- 14.3 The Supplier warrants and represents to the Customer that it has and will maintain in place at all times procedures under the Modern Slavery Act 2015 to ensure its compliance with the Modern Slavery Act 2015 and will enforce those procedures where appropriate.

15 Escalation Procedure and Expert Determination

- 15.1 All disputes arising out of or in connection with this Agreement shall first be referred to the Relationship Managers who shall discuss and attempt to resolve such dispute as soon as reasonably practicable and, in any event, within 3 Working Days.
- 15.2 Where a dispute to be considered by the Relationship Managers in accordance with Clause 15.1 is not resolved by them within 3 Working Days then either Party may consider resolution via the Expert Determination Procedure.
- 15.3 The procedure set out in Clauses 15.4 to 15.6 (inclusive) shall apply where a dispute between the Parties is to be determined in accordance with this Agreement by the Expert Determination Procedure or both the Relationship Managers agree that a dispute should be determined by the Expert Determination Procedure.
- 15.4 Where a dispute is to be determined by the Expert Determination Procedure, the dispute shall be referred to an Expert who shall act as an expert and not an arbitrator (and for the avoidance of doubt the Arbitration Act 1996 shall be excluded in relation to such disputes) who shall decide the matter and whose decision shall be final and binding on the Parties in the absence of fraud or manifest error.
- 15.5 If no decision is made by the Expert within 3 (three) months of their appointment then unless agreed otherwise by the Parties the provisions of Clause 21 shall apply to resolve the dispute.
- 15.6 The Parties shall each bear their own costs in relation to any reference made to the Expert under this Clause 16 and the fees and all other costs of the Expert shall be borne jointly in equal proportion by the Parties unless otherwise directed by the Expert.
- 15.7 Nothing in this Clause 16 shall prevent or delay either Party from seeking any interim injunctions, interdicts or orders in connection with any matter under or pursuant to this Agreement.

16 Non-solicitation

- 16.1 The Customer shall not, during the Term and for a period of 12 months following termination or expiry of this Agreement (except with the Supplier's prior written consent) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the Supplier's employment or engagement, any employee, contractor or sub-contractor of the Supplier who is during the Term employed or engaged in the provision of Professional Services or Support to the Customer.
- 16.2 It shall not be a breach of Clause 16.1 for the Customer to generally advertise in good faith an open to all-comers position or vacancy, not specifically targeted at anyone employed or engaged by the Supplier.
- 16.3 Should the Customer breach this Clause 16 it shall pay to the Supplier a fee equivalent to 6 months' gross pay or fees for the relevant employee, contractor or sub-contractor and such fee shall be payable within 45 days of the date of the Supplier's invoice.

17 Grossing-Up for Tax

If the Customer is required by law to make any deduction or withholding from any payment to the Supplier on account of any Tax then the Customer shall, when making the payment to which the withholding or deduction relates, pay to the Supplier such additional amount as will ensure that the Supplier receives the same total amount that it would have received if no such withholding or deduction had been required.

18 Assignment

- 18.1 The Supplier may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement.
- 18.2 The Supplier may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.
- 18.3 This Agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 18.4 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

19 Event of Force Majeure

- 19.1 The Supplier shall not be deemed to be in breach of this Agreement or otherwise liable the Customer in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to an Event of Force Majeure.
- 19.2 If the Supplier's performance of its obligations under this Agreement is affected by an Event of Force Majeure:
 - 19.2.1 it shall give written notice to the Customer, specifying the nature and extent of the Event of Force Majeure, within 5 Working Days of becoming aware of the Event of Force Majeure and will at all times use all reasonable endeavours to mitigate the severity of the Event of Force Majeure;
 - 19.2.2 subject to the provisions of Clause 19.3, the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such event;
 - 19.2.3 it shall not be entitled to payment from the Customer in respect of extra costs and expenses incurred by virtue of the Event of Force Majeure.
- 19.3 If the Event of Force Majeure continues for more than 3 months, either Party may give notice in writing to the other to terminate this Agreement. The notice to terminate must specify the termination date, which must not be less than 15 Working Days after the date on which the notice is given, and once such notice has been validly given, this Agreement will terminate on that termination date.

20 General

20.1 Notices.

- 20.1.1 Any notice to be given by a Party under or in connection with this Agreement shall be in writing in English language and delivered by hand or sent by UK first class post or other next Working Day delivery service to the other Party at the address given in this Agreement or as otherwise notified to the other Party in writing from

time to time or by email to such email address as the Parties choose and notify to the other Party from time to time.

20.1.2 Any such notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the address or given to the addressee; or
- (b) in the case of pre-paid first class UK post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or
- (c) in the case of pre-paid airmail, 9.00 am on the fifth Working Day after posting or at the time recorded by the delivery service;
- (d) if sent by email on a Working Day at the time of transmission provided that a non-delivery communication is not received by the sender.

20.1.3 A notice shall have effect from the earlier of its actual or deemed receipt by the addressee. For the purposes of calculating deemed receipt:

- (a) all references to time are to local time in the place of deemed receipt; and
- (b) if deemed receipt would occur on any day other than a Working Day, deemed receipt is 9.00 am on the next Working Day.

20.1.4 This Clause 20.1 does not apply to the service of any proceedings or other documents in any legal action.

20.2 **Entire Agreement.**

20.2.1 This Agreement contains the entire understanding between the Parties in relation to its subject matter and supersedes all (if any) subsisting agreements, arrangements, understandings, negotiations, discussions or correspondence (written or oral, express or implied) relating to the same.

20.2.2 The Customer acknowledges that in entering into this Agreement it has not relied on any warranty, representation or undertaking (whether made innocently or negligently) which is not contained in or specifically incorporated into this Agreement. The Customer agrees and acknowledges that its only remedy in respect of those representations, statements, assurances or warranties set out in this Agreement will be for breach of contract, in accordance with the terms of this Agreement, provided always that nothing in this Clause 20.2 shall exclude or limit the liability of for any fraudulent misrepresentation or warranty fraudulently given and upon which the Customer can prove it has placed reliance.

20.3 **Further Assurance.** The Customer will at all times after the date of this Agreement do and execute or procure to be done and executed all other necessary acts, deeds, documents and things within their power to give effect to this Agreement.

20.4 **Variations.** No variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each Party.

20.5 **Costs and expenses.** Each Party shall pay the legal and other costs and expenses incurred by it in connection with the preparation, negotiation and completion of this Agreement and all ancillary documents.

20.6 **Third party rights.** Save as expressly provided in this Agreement, a person who is not a Party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999

to enforce any term of this Agreement. The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

20.7 **Waiver.** A failure, delay or neglect by either Party to exercise any right or remedy or enforce any of the provisions of this Agreement shall not be construed or deemed to be a waiver or continuing waiver of that Party's rights or remedies, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

20.8 **No Partnership.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of the other Party, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

20.9 **Severance.**

20.9.1 If any of the provisions of this Agreement shall be declared invalid or unenforceable in whole or in part by any competent court or other authority whose decisions shall have the force of law binding on the Parties, that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions shall not be affected.

20.9.2 If the invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, that Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and to that greatest extent possible achieves the Parties original commercial intention.

20.10 **Counterparts.**

20.10.1 Each Party agrees to sign this Agreement by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of our intention to be bound by this Agreement as if signed by each Party's manuscript signature.

20.10.2 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, each of which when executed shall constitute the duplicate original of this Agreement but all the counterparts shall together constitute one and the same instrument.

20.10.3 No counterpart shall be effective until each Party has executed at least one counterpart.

21 Governing Law and Jurisdiction

21.1 This Agreement and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

21.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 SUPPORT

1 Support

- 1.1 The Supplier shall use reasonable endeavours to:
- 1.1.1 provide a help desk service for the provision of support (the **Help Desk**) that can be contacted by emailing the Supplier or submitting a ticket through the Customer Dashboard, by such means of contact as the Supplier shall make available to its Customer from time to time;
 - 1.1.2 carry out planned maintenance to the Solution between 10.00 pm and 5.00 am;
 - 1.1.3 carry out unscheduled emergency maintenance at such times as the Supplier determines, and the Supplier will use its reasonable endeavours to provide the Customer with prior notice of such unscheduled maintenance if reasonably possible;
 - 1.1.4 provide technical support for Incidents in accordance with paragraphs 3 and 4;
 - 1.1.5 make the latest version of the Software available to the Customer as the Supplier generally makes such versions available to its customers;
 - 1.1.6 inform the Customer of any required upgrades to the Customer Environment; and
 - 1.1.7 provide guidance/training on new Functionality and common issues.
- 1.2 The Customer is responsible for upgrading the Customer Environment as recommended by the Supplier and the Customer acknowledges that any failure by the Customer to implement such upgrades could result in the Solution not operating in accordance with the Documentation or as required by the Customer or impact on the security of the Solution and the Customer Environment and create an IT security risk. The Supplier shall not be liable to the Customer for any failure of the Supplier to perform or comply with its obligations under this Agreement or any loss or damage suffered or incurred by the Customer as a result of or that arises in connection with the Customer's failure to implement the recommended upgrades to the Customer Environment.
- 1.3 The Customer shall provide the Supplier, together with its employees, agents or representatives with remote access to the Customer Environment, as reasonably required by the Supplier in order for the Supplier to provide Support.

2 Service Exclusions

- 2.1 Support does not include the Supplier dealing with:
- 2.1.1 maintenance of any equipment not belonging to the Supplier, including the Customer Environment;
 - 2.1.2 maintenance of the Hosting Environment, which will be provided at such times and intervals as are determined by the provider of these facilities and the Customer acknowledges that the Supplier has no control over this;
 - 2.1.3 Incidents that arise out of or in connection with:
 - (a) any failure of the Customer Environment;
 - (b) any misuse, incorrect use of (i.e. use for a purpose for which it was not designed) or damage to the Solution;
 - (c) the Customer preventing the Supplier (as applicable) from performing required

or planned maintenance;

- (d) the Customer's failure to implement:
 - (i) recommendations and/or requirements in respect of solutions to Incidents previously advised the Supplier;
 - (ii) the Supplier's recommendations with regards to the use of the Solution or the Customer Environment; or
 - (e) any breach by the Customer of any of its obligations under this Agreement;
- (each a **Service Exclusion**).

2.2 Support outside of Working Hours or required in respect of any issue arising from a Service Exclusion may be provided by the Supplier as a Professional Service, and the Supplier shall be under no obligation to provide such Support.

3 Incident Notification, Responses and Customer's obligations

3.1 If an Incident occurs, the Customer shall immediately notify the Supplier via the Help Desk.

3.2 When notifying the Supplier of an Incident and during the provision of Support by the Supplier, the Customer shall provide the Supplier with all information and documents required by the Supplier to enable the Supplier to determine whether an Incident has occurred, if the Incident is one which falls into a Service Exclusion and what priority level should be given to the Incident. Information to be provided includes:

- 3.2.1 description of the Incident;
- 3.2.2 detailed steps on how to reproduce the Incident (if applicable);
- 3.2.3 screenshots (if relevant);
- 3.2.4 error logs (if available);
- 3.2.5 browser's version and configuration of the Authorised User witnessing the incident;
and
- 3.2.6 Customer Environment details including version numbers.

3.3 The Customer shall:

- 3.3.1 ensure that Authorised Users are appropriately trained at the Customer's cost in the use of the Solution to perform their role;
- 3.3.2 provide the Supplier with reasonable assistance to reproduce the Incident as requested including access to the Customer Environment and, during Working Hours, the relevant Customer's records, personnel and data.

3.4 The Supplier will provide an initial response to any Incident notified to the Help Desk within 30 minutes of the Incident being logged with the Help Desk (measured during Working Hours). Such response may take the form of:

- 3.4.1 an email to acknowledge that the Incident has been logged with the Help Desk and, where relevant the priority level assigned to the Incident;
- 3.4.2 general advice on the Incident including directing the Customer to the relevant sections within the Documentation.

4 Technical Support for Incidents

4.1 The priority of an Incident shall be determined in accordance with the tables set out in paragraph 4.3.

4.2 The Supplier will use its reasonable endeavours to provide the relevant response to the Incident in accordance and as required by the response and response times set out in the tables below.

4.3 Incident Priority Levels

Priority level	Definition	Response and Response Time
P1	<p>Business Critical Failure:</p> <p>A catastrophic error in, or failure of, the Solution that causes a complete inability of the Solution to operate.</p>	<p>Initial Response</p> <p>Acknowledge the Incident reported and confirm the Incident is a P1 priority level.</p> <p>Initial Response Time 1 working hour following the report of the Incident to the Help Desk (measured during Working Hours).</p> <p>Resolution Response</p> <p>a) Restoration of the Solution to a state that allows the Customer to continue to use all functions of the Solution in all material respects; or</p> <p>b) Resolution by way of a workaround reasonably acceptable to the Customer further to which the priority level shall reduce to a priority level P2 or P3.</p> <p>Resolution Response Time</p> <p>2 Working Days following the report of the Incident to the Help Desk.</p> <p>Further Response</p> <p>Continue to work on the Incident in accordance with the lower priority level the Incident has been downgraded to.</p>
P2	<p>Significant Business Impact:</p> <p>An error in, or failure of, the Solution that has a significant business impact being the Solution are usable, but severely restricted.</p>	<p>Initial Response</p> <p>Acknowledge the Incident reported and confirm the Incident is a P2 priority level.</p> <p>Initial Response Time 1 working hour following the report of the Incident to the Help Desk.</p> <p>Resolution Response</p> <p>a) Restoration of the Software to a state that allows the Customer to continue to use all functions of the Software in all material</p>

		<p>respects; or</p> <p>b) Resolution by way of a workaround reasonably acceptable to the Customer further to which the priority level shall reduce to a priority level P3.</p> <p>Resolution Response Time</p> <p>5 working days following the report of the Incident to the Help Desk (measured during Working Hours).</p> <p>Further Response</p> <p>Continue to work on the Incident in accordance with the lower priority level the Incident has been downgraded to.</p>
P3	<p>Minor Error:</p> <p>An isolated or minor error in the Software that:</p> <p>(a) does not significantly affect the Solution functionality;</p> <p>(b) may disable only certain non-essential functions; or</p> <p>(c) does not materially impact the Customer's business.</p>	<p>Initial Response</p> <p>Acknowledge the Incident reported.</p> <p>Initial Response Time</p> <p>1 working hour following the report of the Incident to the Help Desk (measured during Working Hours).</p> <p>Resolution Response</p> <p>Provide a patch or fix</p> <p>Resolution Response Time</p> <p>30 Working Days following the report of the Incident to the Help Desk.</p>