

## 1. DEFINITIONS

- In this Contract the following words have the following meanings:
- 1.1 “Acceptable Use Policy” means, in relation to a Hosted Service, the acceptable use policy which all Authorised Users must comply with while using the Hosted Service. The Acceptable Use Policy for any given Hosted Service can be accessed by the Authorised User in the password protected area of the Hosted Service and / or can be found at <https://agiliosoftware.com/policies/acceptable-use-policy/>
- 1.2 “Affiliate” means any direct or indirect Holding Company or Subsidiary Company of the relevant entity. A Company is a “Subsidiary” of another Company, if the latter company (“Holding Company”): (a) holds a majority of the voting rights in it; or (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it. “Company” includes any body corporate or any legal entity capable under law of making a contract.
- 1.3 “Authorised Users” means those employees, partners, officers and independent contractors of the Client who are authorised by the Client to use the Hosted Services for the Licensing Purpose.
- 1.4 “Client Infrastructure” means the Client’s systems and technical infrastructure (whether owned or licensed by the Client), including those systems that directly or indirectly interface and/or are interoperable with, and/or impact on, the Services, and which are not under the Supplier’s management and control and explicitly identified as the Supplier’s responsibility under this Contract, but excluding the Connectivity Infrastructure.
- 1.5 “Client” means the ‘Client’ specified in the Order Form, including any Group Clients (if relevant).
- 1.6 “Connectivity Infrastructure” means the internet, telecommunications links, broadband and/or third party software and systems which are neither owned or supplied by the Supplier or the Client and which connect the Hosted Services to wide area networks.
- 1.7 “Consultancy Support” some Services include the provision of a consultant to provide for example: human resources, compliance or regulatory consultancy services.
- 1.8 “Contract” means these MSA Terms & Conditions and the Schedules, and the Order Form, .
- 1.9 “Costs” means costs, liabilities, penalties, and charges.
- 1.10 “Deliverables” means the output/deliverables in respect of any Services.
- 1.11 “Effective Date” means the contract date specified in the Order Form.
- 1.12 “Event of Force Majeure” any circumstances beyond a party’s reasonable control, including, without limitation: (a) act of God, explosion, flood, tempest, fire or accident; (b) unusual atmospheric conditions and unusual conditions in outer space which may affect signals to and from and the workings of satellites; (c) war or threat of war, sabotage, insurrection, civil disturbance or requisition; (d) import or export regulations or embargoes; (e) any change in any Law(s) that has an impact on the parties’ rights and/or responsibilities under this Contract; (f) any breach by a third party of the Computer Misuse Act 1990 or the Communications Act 2003 that has the object or effect of directly or indirectly interfering with or damaging the Client Infrastructure, and/or the Supplier’s hardware, software and/or network infrastructure; (g) any government guidance or instruction(s) applicable to either party or its suppliers (and any difficulties in obtaining supplies), arising as a result of any epidemic, pandemic, or outbreak of disease; (h) national or regional loss of or interrupted supply of utilities or essential supplies.
- 1.13 “Fees” means the fees and charges specified in the Order Form and the SOW(s).
- 1.14 “Group Client” where one body, company, or practice (for example Primary Care Network, Integrated Care Board and / or Dental Support Organisation) contracts with the Supplier for and on behalf of a number of other bodies, companies or practices (which may or may not be subsidiaries), the “Client” is the signing body (for and on behalf of each Group Client), company or practice and a “Group Client” is any one of the subsidiary bodies, companies, or practices.
- 1.15 “Helpline Support”: some Services come with telephone and / or email support service to cover, for example: human resources, compliance, or regulatory.
- 1.16 “Hosted Services” means the online software applications (‘Hosted Services’) selected in the Order Form.
- 1.17 “Intellectual Property Rights” means all copyrights (including copyright in computer software), database rights, rights in inventions, patent applications, patents, trade marks, trade names, know-how, service marks, design rights (whether registered or unregistered), trade secrets, rights in confidential information and all other industrial or intellectual property rights of whatever nature for the full duration of such rights, including any extensions or renewals.
- 1.18 “Law” means any applicable laws, regulations, regulatory constraints, obligations, proclamations, rules (including binding codes of practice and statement of principles incorporated and contained in such rules), or applicable judgment of a relevant court of law which is a binding precedent, in each case in force in any jurisdiction that is or may be applicable to this Contract.
- 1.19 “Licensing Purpose” means in the ordinary course of the Client’s business and for the use(s) envisaged in the Supplier’s published marketing materials for the Hosted Services.
- 1.20 “Minimum Term” means the period identified in the Order Form as the ‘Minimum Term’.
- 1.21 “Order Form” means the ‘MSA Order Form’ agreed between the parties.
- 1.22 “Renewal Term” means the shorter of: (a) the period, equal in length, to the Minimum Term; and (b) one year.
- 1.23 “Services” means Set-up and Implementation Services, Hosted Services, any services specified in the Order Form, any Consultancy Support or Helpline Support which comes as part of a Hosted Service package, and any other services from time to time performed pursuant to an SOW.
- 1.24 “Set-up and Implementation Services” means ‘Set-up and Implementation Services’ as described in the Order Form.
- 1.25 “SLA” means the ‘Service Level Agreement’ set out as a Schedule to this Contract which is the SLA for the technical support for the Hosted Services only.
- 1.26 “SOW” means a contract for specified professional services that is made in accordance with Clause 4.2.
- 1.27 “Supplier” means the ‘Supplier’ specified in the Order Form.
- 1.28 “Supplier Content” means all text, templates, information, advice, data, images, audio or video material in whatever medium or form generated by and provided by the Supplier to the Client via the Hosted Services, the Helpline Support, the Consultancy Support or otherwise as part of the Services.
- 1.29 “System Access” the local and wide area access to the Client Infrastructure as required by the Supplier in order to provide the Services pursuant to this Contract.
- 1.30 “Target Go-Live Date” means the target date (advised by the Supplier) on which the Client should put some or all of the Hosted Services into live and/or operational use.
- 1.31 “User Data” means any information, images, videos, materials, or data: (a) uploaded, stored or created in or using the Hosted Services by: (i) the Client or its Authorised Users; or (ii) the Supplier or a third party on the Client’s or its Authorised Users’ instructions; and/or (b) provided to the Supplier by (or on behalf of) the Client or its Authorised Users.
- 1.32 “User Terms” means, in relation to a Hosted Service, the set of user terms which all Authorised Users must comply with while using the Hosted Service. The User Terms for any given Hosted Service are accessed by the Authorised User in the password protected area of the Hosted Service and / or can be found at <https://agiliosoftware.com/policies/user-terms/>

## 2. HOSTED SERVICES

- 2.1 From the Target Go-Live Date the Supplier shall provide the Services substantially in accordance with the SLA with

- reasonable skill and care in accordance with good industry practice, subject to the terms of this Contract and provided that the Supplier does not warrant that the Client's use of Hosted Services will be uninterrupted or error free.
- 2.2 Subject to the Client complying at all times with the terms of this Contract, the Supplier grants to the Client a non-exclusive non-transferable licence for the duration of this Contract to: (a) permit its Authorised Users to use the Hosted Services for the Licensing Purpose and at all times in compliance with the Law, subject to the licensing parameters set out in the Order Form; and (b) use the Deliverables and the Supplier Content for the Licensing Purpose.
- 2.3 If there are Group Clients, the Client signs the Order Form for and on behalf of each Group Client (and confirms that it has the authority to do so), and the terms and conditions set out in this MSA Terms and Conditions apply between the Supplier and each Group Client; and each Group Client is bound by these MSA Terms and Conditions in the same way as between the Supplier and the Client.
- 2.4 During the term of this licence the Client agrees that:
- (i) it shall use the Supplier Content for internal business purposes only;
- (ii) it shall not directly or indirectly allow access to the Supplier Content to any party who is not an Authorised User;
- 2.5 The Client shall not conduct, facilitate, authorise or permit any text or data mining or web scraping in relation to any of the Supplier Content or any services provided via, or in relation to, the Services.
- 2.6 On Termination of the Contract, any rights the Client may have to use the Supplier Content shall cease immediately.
- 2.7 Supplier Content is provided for the purposes of education, training and / or administrative support only. The Supplier makes no representation or warranty that the Supplier Content is error-free, accurate or up to date or suitable for the Client's particular use in any specific jurisdiction. The Client is advised to take professional advice before making any clinical, legal, or otherwise material decision. The Supplier Content should never be considered a substitute for the advice of a lawyer or medical professional (as is appropriate in the circumstances). The Supplier Content should not be used to substitute the clinical judgement of any qualified physician or medical professional.
- 2.8 The Supplier shall not be responsible for any failure to provide Hosted Services as a result of a failure by the Client to comply with its responsibilities under this Contract and: (a) errors in or corruption of the Client Infrastructure, Connectivity Infrastructure, and/or the User Data; and/or (b) the occurrence of a Suspension Event.
- 2.9 The Supplier reserves the right at its sole discretion to suspend or limit performance of the Hosted Services in the event of (each of which shall be a "**Suspension Event**"): (a) scheduled maintenance services (for which the Supplier shall give to the Client as much notice as is reasonably practicable in the circumstances); (b) a material breach by the Client of the terms of this Contract (including a failure to pay the Fees in accordance with Clause 5); (c) where ongoing use by the Client of the Hosted Services, in the Supplier's reasonable opinion, has the prospect of damaging the Hosted Services or degrading performance (or actually has damaged or degraded the same); (d) the occurrence of an Event of Force Majeure.
- 2.10 In the event of a failure by the Supplier to provide Hosted Services in accordance with this Contract, the Supplier will, at its expense, use all reasonable commercial efforts to correct any such failure(s) promptly (which may include the provision of a temporary workaround) in accordance with the SLA. The Supplier's provision of corrective services in accordance with this Clause 2.10 shall constitute the Client's exclusive remedy for any breach of Clause 2.1 or 2.2. Nothing in this Clause 2.10 purports to limit the Supplier's liability for any failure of the Supplier to comply with this Clause 2.10 (for which the provisions of Clause 12 shall apply).

## 3. CLIENT'S RESPONSIBILITIES

- 3.1 The Client shall: (a) undertake all reasonable enquiries to satisfy itself that the Services are suitable for its needs before entering into this Contract; (b) adopt such processes and make such changes to its working practices as are necessary to make effective use of the Services; (c) have in place appropriate Client Infrastructure and Connectivity Infrastructure necessary for the provision of Services; (d) maintain and upgrade the Client Infrastructure and Connectivity Infrastructure in accordance with good industry practice, the Supplier's reasonable instructions, and any minimum environment recommendations published as part of Software specifications/guidelines; (e) carry out all of its responsibilities set out in this Contract in a timely and efficient manner and, in particular, not act (or fail to act) in a manner that will delay or otherwise adversely impact on the Supplier (or its subcontractors) performance of Services; (f) provide the Supplier with all necessary information, co-operation, and assistance as may be required by the Supplier in order to provide Services; (g) comply with the Law with respect to its activities under this Contract; (h) provide the Supplier with such technical support, information, and access to systems and/or data as the Supplier reasonably requires in order to maintain System Access for the duration of this Contract; (i) reasonably determine whether it is appropriate (as a matter of good industry practice) to implement any form of additional back-up of User Data (in addition to such back-ups maintained by the Supplier as part of the Hosted Services) and if so either commission directly (or via the Supplier, if available) such additional data back-up services; (j) ensure that any data (including User Data) migrated to the Supplier as part of any data migration project is appropriately cleansed and is free from corruption or material errors; (k) not reverse engineer or decompile the Software (or attempt to do the same), save to the extent permitted by Law.; (l) ensure that its Authorised Users only use the Services in accordance with the Contract and accept responsibility for any unauthorised user's breach thereof; (m) ensure that Authorised Users create secure passwords and keep such password confidential at all times and under no circumstances share that password with any other person; (n) ensure that access to the Hosted Service for any Authorised User who ceases to be employed or retained by the Client is removed immediately; and (n) procure that all Authorised Users comply with the User Terms and the Acceptable Use Policy; and (n) procure that all Group Clients comply with the terms of this Contract.
- 3.2 Where the Client is a Group Client and purchases any Hosted Service where the Fee is determined by the number of subsidiary companies or practices, the Supplier will maintain a list of subsidiary companies or practices and the Client agrees to inform the Supplier immediately where the number of subsidiary companies or practices changes, and the Supplier reserves the right to charge for such practices.
- 3.3 The Client recognises that the availability of the Hosted Services is, in part, dependent on the stability of the Connectivity Infrastructure and Client Infrastructure, and that changes to the Connectivity Infrastructure and Client Infrastructure may result in the loss of availability of (or the material degradation of) the Hosted Services. The Client shall not make changes to those elements of the Connectivity Infrastructure and Client Infrastructure that are within its control, which may impact on the Hosted Services, without the authorisation of the Supplier. The parties agree that changes to Connectivity Infrastructure that are outside of both parties control (and the consequences of such changes) are not the responsibility of either party (with the exception of the Client's responsibility to pay Fees); save that both parties shall use their reasonable endeavours to mitigate the adverse impact of such changes on the Hosted Services.
- 3.4 The Client shall permit the Supplier, on reasonable notice, to test the Client Infrastructure. In the event that the Supplier reasonably considers that the Client Infrastructure is inadequate and/or is (or may be) responsible for performance or functionality failures or degradation, the Client shall make such changes to Client Infrastructure (whether configuration or upgrades) as the Supplier may reasonably recommend.

## 4. SERVICES

- 4.1 Services will be provided pursuant to this Contract if and to the extent that such Services are specified in the Order Form.
- 4.2 This Contract also operates as a framework under which additional Services may be provided if the parties agree any SOW(s) by completing an SOW pro forma. Any written communication is capable of constituting an SOW provided that it is clearly identified as an order for Services. An SOW is deemed completed and binding on the parties if it is signed or otherwise agreed by both parties. Each completed SOW is a separate contract for Services. The completed SOW incorporates all the terms of this Contract that directly or indirectly relate to the SOW.
- 4.3 The Supplier shall provide Services using reasonable care and skill and in accordance with good industry practice. Both parties shall use their reasonable endeavours to meet the timescales specified in any SOW(s). The Supplier shall not be responsible for any failure to achieve deadlines or milestones in any SOW(s) to the extent that the failure has been caused by any delay or default on the part of the Client. Time shall not be of the essence in relation to the Supplier's performance.

## 5. PAYMENT

- 5.1 The Client shall pay: (a) Fees as and when they fall due for payment; and (b) Fees for additional Services in respect of any SOW(s) in the manner specified in the SOW(s).
- 5.2 The Supplier shall be entitled to raise invoices in accordance with the Order Form and any SOWs.
- 5.3 The Supplier may invoice in advance.
- 5.4 The Client shall pay the Supplier's invoices either: (a) within thirty (30) days of the date of the invoice (or within such shorter period as specified in the Order Form); or (b) immediately by direct debit or standing order (if applicable; and if specified in the Order Form).
- 5.5 The Client may not withhold payment of any amount due to the Supplier because of any set-off, counter-claim, abatement, or other similar deduction.
- 5.6 All fees payable by the Client to the Supplier under this Contract are payable in Pounds Sterling (unless another currency is specified in the Order Form) and are exclusive of any tax, levy or similar governmental charges, including value added or sales tax, that may be assessed by any jurisdiction (except for income, net worth or franchise taxes on the Supplier which shall be additionally payable by the Client).
- 5.7 If any sum payable under this Contract is not paid within ten (10) days after the due date for payment then (without prejudice to the Supplier's other rights and remedies) the Supplier reserves the right to charge interest on that sum on a daily compounded basis (before as well as after any judgment) at the annual rate of ten per cent measured from the due date to the date of payment, provided that at no time shall the Client be required to pay interest at an effective rate higher than legally permissible.
- 5.8 Following the expiry of the Minimum Term, and unless otherwise specified in the Order Form, the Supplier reserves the right to increase its fees by no more than 8% in any given 12-month period. If due to economic or other circumstances (following the expiry of the Minimum Term) a rise of more than 8% in any given 12-month period is in the Supplier's opinion necessary, the Supplier will write to inform the Client of such rise more than 30 days prior to the price rise taking effect.

## 6. PROPERTY RIGHTS

- 6.1 Full and unencumbered title (with full title guarantee) in Hosted Services, Deliverables and the Supplier Content shall vest in the Supplier absolutely upon creation and the Supplier and its licensors owns and shall continue to own all Intellectual Property Rights in the Hosted Services, the Supplier Content and any Deliverables. The Client undertakes at the request of the Supplier at all times from the date of this Contract to, and to procure that any and all of its sub-contractors, any Group Client, and any third party involved in any SOW(s) shall, do all acts and execute all documents, papers, forms and authorisations and to dispose to or swear all declarations or

oaths reasonably necessary and/or desirable to give effect to the provisions of this Clause 6.1.

## 7. TERM AND TERMINATION

- 7.1 **This Contract.** This Contract is formed (and becomes legally binding) when the parties complete and sign the Order Form. This Contract shall commence on the Effective Date and shall continue unless and until terminated by either party in accordance with this Clause 7.
- (i) Either party shall be entitled to terminate this Contract on expiry of the Minimum Term specified in the Order Form and each subsequent Renewal Term by giving to the other party not less than ninety (90) days' prior written notice.
- (ii) Either party shall be entitled to terminate this Contract immediately by giving written notice to the other party if the other party commits any material breach of this Contract and fails to remedy that breach within thirty (30) days of written notice of that breach, provided that: (a) the thirty (30) day period only applies where a breach is capable of remedy - if it is incapable of remedy, the Contract may be terminated by written notice immediately; and (b) the parties agree that any failure to pay sums due under this Contract within the agreed payment terms shall constitute a material breach of this Contract.
- 7.2 **SOW(s).** The SOW(s) shall commence in accordance with Clause 4.2 and shall terminate on completion of the Services or in accordance with this Clause 7.2.
- (i) Either party shall be entitled to terminate any SOW(s) immediately by giving to the other party not less than ninety (90) days' prior written notice, save in respect of any SOW(s) that vary the scope of the Hosted Services.
- (ii) Either party shall be entitled to terminate any SOW(s) immediately by giving written notice to the other party if the other party commits any material breach of this SOW and fails to remedy that breach within thirty (30) days of written notice of that breach, provided that: (a) the thirty (30) day period only applies where a breach is capable of remedy - if it is incapable of remedy, the SOW may be terminated by written notice immediately; and (b) the parties agree that any failure to pay sums due under any SOW within the agreed payment terms shall constitute a material breach of the SOW.
- 7.3 **Insolvency.** Save to the extent otherwise specified by Law, either party shall be entitled to terminate either this Contract and/or any SOW(s) immediately by giving written notice to the other party if that other party has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.

## 8. CONSEQUENCES OF TERMINATION

- 8.1 On termination of this Contract or any SOW(s) howsoever caused: (a) the rights and duties created by Clauses 5, 6, 9, 10, 12, 15, 16, and 17 shall survive; (b) the rights of either party which arose on or before termination shall be unaffected.
- 8.2 On termination of this Contract howsoever caused: (a) the SOW(s) shall be unaffected; (b) each party shall return, in good condition, the property of the other party (if any) that was made available under this Contract in accordance with that other party's reasonable instructions; (c) all licences granted shall terminate; (d) the Supplier shall make available User Data for migration to the Client; and (e) the Supplier shall be entitled to permanently erase all User Data after the period of 90 days has elapsed from the effective date of termination of this Contract.

- 8.3 On termination of any SOW(s) howsoever caused: (a) other SOW(s) and the Contract shall be unaffected; and (b) each party shall return, in good condition, the property of the other party (if any) that was made available under the SOW(s) in accordance with that other party's reasonable instructions. In the event that termination of the SOW(s) precedes completion of the Services: (i) the Supplier shall make such partial delivery to the Client of the Deliverables as is reasonably practicable (subject to full receipt of payment under the SOW), such Deliverables to be provided on an "AS IS" basis; and (ii) if the parties had agreed to a fixed price under the SOW(s), the Supplier may (at its sole discretion) reduce the fixed price by an amount that reasonably reflects both the value of the Services that have been provided under the SOW(s) and the cost to the Supplier of providing such Services.
- 9. CONFIDENTIALITY**
- 9.1 Each party that receives ("**Receiving Party**") non-public business or financial information (subject to Clause 10.3) ("**Confidential Information**") from the other (or the other's Affiliates) ("**Disclosing Party**"), whether before or after the date of this Contract shall: (a) keep the Confidential Information confidential; (b) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 9.2, or 9.3; and (c) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Contract ("**Permitted Purpose**").
- 9.2 The Receiving Party may disclose Confidential Information to its own, or any of its Affiliates, officers, directors, employees agents and advisers who reasonably need to know for the Permitted Purpose (each a "**Permitted Third Party**"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 9 of such Permitted Third Party as if such Permitted Third Party was the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 9. The Supplier may disclose Confidential Information to any Affiliate, provided that such Affiliate shall only use such information either for the Permitted Purpose or in order to offer the Client its, or any of its Affiliate's, products and/or services that it reasonably considers may be of interest to the Client.
- 9.3 If required by Law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.
- 10. DATA**
- 10.1 The Supplier shall not own (or claim ownership rights in respect of) User Data.
- 10.2 The Client is responsible for the accuracy, reliability, lawfulness, and integrity of all User Data. The Client warrants that User Data shall not be defamatory, illegal, discriminatory, damaging or offensive and that it, and its Authorised Users, have all consents, licenses and permissions (including the consent of any Data Subjects) in respect of User Data as are required for the Client (and its users) to lawfully upload, store, distribute, publish, share and/or Process the User Data (as applicable): (a) in/through the Hosted Services; and/or (b) to/with other Client users or any third parties who are authorised by the Client or by Law to view/access the User Data. The Client irrevocably permits the Supplier to make User Data available to organisations who are authorised by law to regulate and/or audit the Client, its users, and/or the User Data. The Client shall indemnify and hold harmless the Supplier for Costs arising from a breach of this Clause 10.2, including all Costs associated with handling a complaint or allegation which, if substantiated, would constitute a breach by the Client of this Clause 10.2.
- 10.3 The Client acknowledges that the provision of high-quality services requires the Supplier to analyse data to identify trends, optimise services, and provide clients with the opportunity to use such information to enhance their own services. The Client therefore grants to the Supplier a non-exclusive, perpetual, irrevocable, royalty free, worldwide licence to use, modify, adapt, and create derivative works of User Data (but excluding Patient Data) for any purposes, and commercially exploit and/or sublicense any or all of such rights on any terms, provided always that such User Data must at all times be cleansed such that individuals, the Client, and/or any legal entities cannot be identified in any circumstances ("**Cleansed Data**").
- 10.4 The parties shall comply with the data processing provisions, set out as a Schedule to this Contract.
- 11. AUDIT**
- 11.1 The Supplier shall be entitled, from time to time, to conduct an audit of the number of the Client's Authorised Users (or number of Practices or size of patient population, depending on the relevant Fee variable set out in the Order Form) and use of the Hosted Services to validate that such Authorised Users (or number of Practices or size of patient population, depending on the relevant Fee variable set out in the Order Form) remain within the licensing parameters set out in the Order Form (as may have been varied by mutual agreement) ("**Use Audit**"). If and to the extent the Supplier requires access to data and/or information that is not available to it (and accessible by the Client) in order to undertake such Use Audit, the Client shall promptly provide the Supplier with such data and/or information reasonably requested by the Supplier.
- 11.2 If a Use Audit reveals any unlicensed use by the Client, without prejudice to its other rights and remedies, the Supplier shall be entitled to raise an invoice for such historic unlicensed use at its prevailing list price(s) and either: (a) adjust the future Fees on the same basis on the assumption of such continued use; (b) treat such use as a material breach of this Contract pursuant to Clause 7.1(ii) and require the Client to cease such use.
- 12. LIABILITY**
- 12.1 Neither party shall exclude or limit its liability for: (a) death or personal injury caused by its negligence; and/or (b) fraudulent misrepresentation; and/or (c) any liability that cannot be excluded or limited by Law.
- 12.2 Subject to Clause 12.1, the Supplier shall not be liable for any direct or indirect loss of profit, loss of revenue, loss of anticipated savings, re-procurement costs, and/or loss of goodwill.
- 12.3 The Client agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into this Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).
- 12.4 The Supplier's Contractual Liability to the Client shall not exceed one hundred and fifty per cent (150%) of the fees paid (plus any unpaid fees that are payable) under the Contract (but not any SOW) in the 12 month period prior to the date in which the claim (or series of connected claims) arose. "**Contractual Liability**" means liability howsoever arising under or in relation to the subject matter of this Contract that is not: (a) unlimited by virtue of Clause 12.1; or (b) excluded pursuant to Clauses 12.2 and 12.3.
- 12.5 The Supplier's SOW Liability to the Client shall not exceed the fees paid (plus any unpaid fees that are payable) under the SOW under which the claim (or series of connected claims) arose. "**SOW Liability**" means liability howsoever arising under or in relation to the subject matter of the SOW under which the claim (or series of connected claims) arose that is not: (a) unlimited by virtue of Clause 12.1; (b) excluded pursuant to Clauses 12.2, 12.3, and 12.4.
- 12.6 Except as expressly provided in this Contract, the Supplier hereby excludes any implied condition or warranty concerning the quality or fitness for purpose of its services, whether such condition or warranty is implied by statute or common law.

12.7 Neither party shall be liable for any delay or failure in performing its duties under this Contract caused by an Event of Force Majeure. If an Event of Force Majeure causes the Supplier a delay in or failure to perform duties under this Contract for a continuous period of fourteen (14) days ("**Force Majeure Period**"), the Client shall be entitled to terminate this Contract by giving to the Supplier not less than thirty (30) days' prior written notice, such notice to be given within fourteen (14) days of expiry of the Force Majeure Period.

12.8 The Supplier is not liable for any loss, damage or cost resulting from any decision made by the Client in reliance on the Supplier Content including in particular legal or medical decisions. The Client agrees that it uses the Supplier Content at its own risk.

## 13. ASSIGNMENT AND SUBCONTRACTING

13.1 Neither party shall assign or otherwise transfer this Contract or any of its rights and duties under this Contract without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that the Supplier shall be entitled (and the Client hereby irrevocably consents) to assign in whole or in part, or novate the entirety of this Contract, to any Affiliate as part of a bona fide corporate restructuring by providing not less than seven (7) days' prior written notice to the Client.

13.2 The Supplier may sub-contract the performance of any of its duties. The Supplier shall be entitled, at its sole discretion, to replace such service providers from time to time without notice to the Client.

13.3 The rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

## 14. CHANGES

14.1 Subject to Clause 14.2, no changes to this Contract or the SOW(s) shall be valid unless made in writing and signed by the authorised representatives of both parties.

14.2 The Supplier reserves the right to make changes to the Hosted Services from time to time.

14.3 From time to time, the Supplier may revise the terms of this Contract by notifying the Client. Unless the Client objects to the updated contract terms within thirty (30) days of notification, it will be bound by the updated contract terms.

## 15. NON-SOLICITATION

15.1 For the duration of this Contract and a period of twelve (12) months thereafter, each party shall not, and shall ensure that any of its Affiliates shall not, without the prior written consent of the other, solicit, entice away, and/or actively initiate recruitment (whether directly or indirectly) of any employee of the other who performed (or is performing) a material function for the other party (excluding administrative, secretarial, or other back-office functions).

15.2 If a party breaches Clause 15.1, it shall pay the other party an amount equal to the last twelve (12) months' salary of the applicable individual in recognition of the value of the individual to the other party and cost of recruiting and training a replacement. The parties agree that this sum is a genuine pre-estimate of the loss likely to be suffered by the other party in these circumstances and not a penalty.

## 16. DISPUTES

16.1 The parties shall attempt to resolve any dispute arising out of or relating to this Contract (including any dispute relating to any non-contractual obligations arising out of or in connection with it) (the "**Dispute**") through discussions between senior representatives.

16.2 Where the Dispute is not resolved within forty (40) days of the start of discussions in accordance with Clause 16.1 above, the parties shall attempt to resolve the Dispute in good faith through an Alternative Dispute Resolution ("**ADR**") procedure as recommended by the Centre for Effective Dispute resolution.

16.3 If the Dispute has not been resolved by an ADR procedure within forty (40) days of the initiation of that procedure, or if either of the Supplier or the Client will not participate in an ADR procedure, either of the parties shall be entitled to refer the Dispute to the High Court of England and Wales and the parties submit to its exclusive jurisdiction for that purpose.

16.4 Clauses 16.1 to 16.3 above shall not restrict either party's ability to commence court proceedings in respect of any: (a) matter relating to its Confidential Information or Intellectual Property Rights; and/or (b) unpaid invoice.

## 17. GENERAL PROVISIONS

17.1 **Publicity.** The Client hereby irrevocably consents to the Supplier referring to the Client as a client of the Supplier in its sales and marketing literature (including its web site).

17.2 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Contract.

17.3 **Relationship.** Nothing in this Contract shall render the Client a partner or an agent of the Supplier and the Client shall not purport to undertake any obligation on the Supplier's behalf nor expose the Supplier to any liability nor pledge or purport to pledge the Supplier's credit.

17.4 **Entire Agreement.** This Contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.

17.5 **Severance.** If any part of this Contract is held unlawful or unenforceable that part shall be struck out and the remainder of this Contract shall remain in effect.

17.6 **No Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.

17.7 **No Bribery.** Each party warrants to the other that it: (a) has not and will not commit an offence under the Bribery Act 2010 in relation to this Contract or any other contract between the parties; and (b) has adequate procedures (as defined in section 7(2) of that Act) in place to prevent its associated persons from committing an offence under that Act.

17.8 **Counterparts.** This Contract may be executed in any number of counterparts and by each of the parties on separate counterparts each of which when executed and delivered shall be deemed to be an original, but all the counterparts together shall constitute one and the same agreement.

17.9 **Injunctive Relief.** Nothing in this Contract shall prevent or preclude either party from seeking injunctive relief.

17.10 **Anti-Slavery.** In performing its obligations under this Contract, the Supplier shall: (a) comply with all applicable anti-slavery and human trafficking Laws; (b) use its reasonable endeavours to include in contracts with its subcontractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 17.10; (c) maintain a complete set of records to trace the supply chain of all goods and services provided to the Client in connection with this Contract; and provide to the Client, on not less than 30 days' prior written notice, records to evidence the Supplier's compliance with its obligations under this Clause 17.10. The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

17.11 **Notices.** All notices (which include invoices and correspondence) under this Contract shall: (a) be in writing; (b) be sent to the address of the recipient set out in this Contract or to such other address as the recipient may have notified from time to time; (c) be delivered personally, by a reputable courier service, by first-class post, or by email and shall be deemed to have been served if by hand when delivered, if by courier service or first class post 48 hours after delivery to the courier or posting (as the case may be), or if by email immediately. Notwithstanding the foregoing, the Supplier shall be entitled to give notice under Clauses 13.1 and 14.3 by means of a notification available from the

Supplier's website, which shall be deemed served fourteen (14) days after publication.

17.12 **Interpretation.** In this Contract: (a) any reference to a Clause means a reference to a Clause of this Contract unless the context requires otherwise; (b) unless the context otherwise requires, the words "**including**" and "**include**" and words of similar effect shall not be deemed to limit the general effect of the words which precede them; (c) the headings are for ease of reference only and shall not affect the construction or interpretation of the Contract; and (d) references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

17.13 **Hierarchy.** To the extent there is any inconsistency between the provisions of these terms and conditions, the Order Form, the Schedules, the SOW(s), any documents incorporated into this Contract, and any documents incorporated into the SOW(s) the following order of precedence shall apply: (a) first these terms and conditions; (b) second the Schedules; (c) third the Order Form; (d) fourth the SOW(s); (e) fifth documents incorporated into the SOW(s); and (f) sixth documents incorporated into this Contract.

17.14 **Law.** This Contract is governed by the laws of England.

## AVAILABILITY

1.1 The Supplier shall use its reasonable endeavours to make the Hosted Services available on a 99.5% basis, measured each calendar month. The target uptime set out in this paragraph shall be met if there are no Priority 0 or 1 incidents outstanding. The target uptime excludes downtime during maintenance (as set out in paragraphs 1.2 – 1.3 below), or any agreed installation period for New Products.

## MAINTENANCE

1.2 The Supplier shall from time to time provide and install: (a) minor improvements, updates, enhancements, error corrections, upgrade scripts, and changes to the Supplier Software (each containing updates to the help files and documentation) (“**Maintenance Releases**”); and (b) new releases, new versions, updates, and modifications to the Supplier Software that do not constitute New Products (as generally available in accordance with the Supplier’s timetable for releasing new versions as amended from time to time and available on request including updates to the help files and documentation) (“**New Version**”).

1.3 Nothing in this Contract shall entitle the Client to any new version of the Products which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product (“**New Product**”).

## SUPPORT

1.4 In response to errors in the Hosted Services and/or the Supplier Software reported to the Supplier’s helpdesk in accordance with paragraphs 1.9 - 1.10 (below), the Supplier will provide the service levels specified at paragraphs 1.12 - 1.15 (below) provided the errors reported are not Out of Scope.

1.5 “**Out of Scope**” means errors that fall outside the scope of the Supplier’s responsibilities under this Contract and/or result directly or indirectly from the Client’s: (a) misuse or improper use of the Hosted Services and/or the Supplier Software; and/or (b) combination, merger, or use of the Hosted Services and/or the Supplier Software with any hardware or software outside the Client Infrastructure and/or Connectivity Infrastructure.

1.6 The parties may agree that the Supplier will provide certain support and maintenance services in respect of Out of Scope errors as Services under an SOW.

## ENVIRONMENT

1.7 The Client is responsible for procuring and maintaining the Client Infrastructure and Connectivity Infrastructure.

1.8 Maintenance Releases and New Versions may require enhancements to the Client Infrastructure and Connectivity Infrastructure. The Supplier will advise the Client if such enhancements are required. The Client is responsible for procuring and implementing such enhancements. The parties may agree that the Supplier will provide assistance with implementation as Services under an SOW.

## CONTACTING THE COMPANY

1.9 The Supplier’s support operates during the “**Support Hours**”: from 09:00 – 17:00, Monday – Friday, excluding public holidays in England).

1.10 The Client may only contact the Supplier in respect of support queries as follows: (a) email: at the Supplier’s specified support email address; and (b) telephone: at the Supplier’s specified support telephone number, available from its website.

1.11 References to hours in this Service Level Agreement do not include hours outside the Support Hours.

## SERVICE LEVELS

1.12 The Supplier will assign a reported incident with a unique support number. If the Supplier determines that the reported incident is a fault or error with the Hosted Services and/or the

Supplier Software and is within the scope of paragraph 1.4 (above) it will: (a) categorise the incident in accordance with the incident categories detailed at paragraph 1.15 (below); and (b) deliver Solutions in accordance with the response times detailed below.

1.13 “**Solutions**” are fixes or workarounds that eliminate the incident or move the incident into a lower incident category, which are provided remotely and which may (or may not) include the Supplier providing Maintenance.

1.14 If and when a Solution moves an incident into a lower incident category, the response times of that lower incident category shall apply from the moment that the incident is re-categorised.

1.15 Incident categories and responses:

Incident Category	Response
<b>Priority 0 (Mission Critical)</b>	
The system is <u>not operational</u> .	Reasonable efforts to start work within 1 hour and to provide a Solution within 8 hours of starting work.
<b>Priority 1 (Business Critical)</b>	
<u>Material functionality</u> is not available that is <u>critical</u> to the Client’s business and there is <u>no</u> temporary / short term workaround.	Reasonable efforts to start work within 1½ hours and to provide a Solution within 16 hours of starting work.
<b>Priority 2 (Serious)</b>	
Priority 1 where there <u>is</u> a temporary / short term workaround. OR <u>Important</u> but <u>non-material</u> or <u>non-critical</u> functionality is not available and there is <u>no</u> temporary / short term workaround.	Reasonable efforts to start work within 2 hours and to provide a Solution within 40 hours of starting work.
<b>Priority 3 (Normal)</b>	
<u>Important</u> but <u>non-material</u> or <u>non-critical</u> functionality is not available and there <u>is</u> a temporary / short term workaround.	Reasonable efforts to start work within 4 hours and to provide a Solution within 80 hours of starting work.
<b>Priority 4 (Minor)</b>	
Any incident that is not Priority 0, Priority 1, Priority 2, or Priority 3.	Noted with a Solution to be implemented as part of the product development roadmap.

**DEFINED TERMS**

1. For the purposes of this Schedule:
  - 1.1. **“Controller Beneficiary”** means the Data Controller of Personal Data that is processed by the Supplier on behalf of the Client pursuant to this Contract (where such Data Controller is not the Client);
  - 1.2. **“Data Controller”, “Data Subject”, “Personal Data”, “Data Processor”,** and **“Process”** shall have the meaning specified in the Data Protection Legislation; and
  - 1.3. **“Data Protection Legislation”** means the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003 and any related act or regulation in the UK, including statutory modification or re-enactment of it.

**DATA CONTROLLER**

2. The Supplier’s Data Privacy Policy (available from its website) sets out the subject matter, duration, nature and purpose of the processing by the Supplier, as well as the types and categories of Personal Data and the obligations and rights of each Controller Beneficiary. It also explains the role of the Supplier as either a Data Controller or Data Processor under this Contract and its corresponding responsibilities. Where the Client is taking out a personal subscription under this Contract, the Client acknowledges that the Supplier shall be the Data Controller. The Client acknowledges that the Supplier has, in accordance with its obligations as a Data Controller, provided the Client with an opportunity to access and read the Supplier’s Data Privacy Policy in advance of entering into the Contract and that, by signing this Contract, they are thereby confirming that they have done so. Where the Client is an organisation, the Client acknowledges that Clarity will be acting as a Data Processor and that it is the responsibility of the Client to ensure that it fully complies with its obligations as Data Controller at all times during the term of the Contract.

**DATA PROCESSING**

3. The Supplier shall in respect of the Processing of Personal Data on behalf of the Client:
  - 3.1. process that Personal Data during the term of this Contract only on the documented written instructions of the Client (which include this Contract) unless the Supplier is required by Laws to otherwise process that Personal Data. Where the Supplier is relying on Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Laws unless those Laws prohibit the Supplier from notifying the Client;
  - 3.2. ensure that it has in place appropriate technical and organisational measures 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 Personal Data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - 3.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 3.4. not transfer any Personal Data outside of the UK and/or European Economic Area unless the prior written consent of the Client has been obtained and there are appropriate safeguards in relation to the transfer;
  - 3.5. assist the Client, at the Client’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach, notifications, impact assessments and

- consultations with supervisory authorities or regulators;
- 3.6. notify the Client without undue delay on becoming aware of a Personal Data breach;
- 3.7. ensure that provisions which are equivalent to those set out in this paragraph 3 are imposed upon any subprocessor engaged by the Supplier (acknowledging that the Supplier shall remain primarily liable to the Client for the subprocessor’s compliance with such provisions);
- 3.8. inform the Client of any intended additions to or replacements of the Supplier’s subprocessors;
- 3.9. subject to Clause 8.2(e) of the Contract, at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Laws to store the Personal Data; and
- 3.10. maintain complete and accurate records and information to demonstrate its compliance with this Schedule and allow for audits by the Client on reasonable notice and (but without thereby assuming the primary liability of the Client to only issue lawful instructions) immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

**CLIENT RESPONSIBILITIES**

4. The Client agrees that, in its role as Data Controller (if applicable), it:
  - 4.1. shall ensure that only lawful instructions are issued to the Supplier in respect of the Processing of the Personal Data;
  - 4.2. shall obtain and maintain throughout the term of the Contract all necessary permissions, consents and authorisations to enable the Supplier to process the Personal Data in accordance with the provisions of the Contract;
  - 4.3. has reviewed and approved the Supplier’s technical and organisational measures as being suitable for the Client’s purposes before entering into the Contract;
  - 4.4. has granted to the Supplier general authorisation to sub-contract its Processing of Personal Data to third parties on the terms set out in paragraph 3.6;
  - 4.5. may be considered to have no objections if it has not advised otherwise in writing within ten (10) days of notification under paragraph 3.7; and
  - 4.6. shall promptly issue its instructions in writing to the Supplier, regarding return or deletion of the Personal Data, upon termination or expiry of the Contract (acknowledging the provisions of Clause 8.2(e) of the Contract.

**THIRD PARTY RIGHTS**

- 4.7. Any Controller Beneficiary is an intended beneficiary of the Supplier’s obligations under this Schedule and, as such, shall be entitled to enforce its rights under this Schedule under the Contract Rights of Third Parties Act 1999, provided that the enforcement of such rights shall be subject to it complying with all Client responsibilities identified in this Schedule (as if it is a Client), and provided further that such enforcement shall be subject to the limitations and exclusions set out in this Contract.
- 4.9. The Supplier confirms that this Schedule complies with the Law.