

Transparency Terms & Conditions

Please find below the agreed Terms and Conditions relating to the provision of products and services.

This document may not be shared with, or distributed to, any other company without the explicit permission of Transparency Solutions Limited.

The Contract is made and entered into as of the date of issue between:

Party 1 Transparency	Name: Transparency Solutions Limited Company Number: 09420434	Address: 9 Nimrod Way, East Dorset Trade Park, Wimborne, Dorset BH21 7UH
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Party 2 (Customer)	Name: Company Number:	Address:
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Signed for and on behalf of Party 1

Signed for and on behalf of Party 2

Signature	Signature
Full Name	Full Name
Position	Position
Date (DD/MM/YY)	Date (DD/MM/YY)

GENERAL TERMS AND CONDITIONS OF SOFTWARE, HARDWARE, IT SUPPORT AND CONSULTANCY

PART A: GENERAL TERMS

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In the Contract, the following words and phrases have the meaning given below (unless the context otherwise requires):

- Acceptance Period** has the meaning set out in Clause 32.11;
- Architect Assurance Service** means the provision of project oversight services by a principle architect;
- Architect Assurance Service Fee** means a twenty per cent (20%) fee calculated by reference to the total price of the Consulting Services as set out in the relevant PID or SoW which applies to all Consulting Services in order to provide the Architect Assurance Service;
- Bespoke Software IP** has the meaning set out in Clause 32.19;
- Business Hours** means 9:00 am to 5:00 pm Monday to Friday on a day that is not a public holiday in England and Wales;
- Consultancy Estimate** has the meaning set out in Clause 31.6;
- Consultancy Time Bank** has the meaning set out in Clause 31.15;
- Consulting Services** means consultants provided by Us to You on a chargeable day rate to complete agreed work either on a time and materials or a fixed price basis;
- Contract** has the meaning set out in Clause 2.1;
- Customer Cause** has the meaning set out in Clause 5.2;
- Customer Faults** has the meaning set out in Clause 32.13;
- Data Protection Legislation** means the EU General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR) and Directive 2002/58/EC, in each case as supplemented or modified by, or transposed into, domestic legislation of each Member State of the European Economic Area (EEA), UK Data Protection Legislation, or, to the extent applicable, the data protection or privacy laws of any other country;
- Data Services** means the data services to be provided by Us as specified in the SoW;
- Data Service Deliverables** has the meaning set out in Clause 35.5;
- Developed Software** means the software to be developed by Us as part of the Software Development Services as specified in the SoW;
- Developed Software Documentation** means documentation relating to the use of the Developed Software as specified in the SoW;
- Developed Software Support Services** means support services provided by Us to You in respect of the Developed Software;
- Developed Software Support Services Time Bank** has the meaning set out in Clause 32.6;
- Development Services** means expert consultants provided by Us to You on a chargeable day rate to complete agreed development work (other than the Software Development Services) on a time and materials basis only;
- DS Acceptance Criteria** has the meaning set out in Clause 35.9;
- DS Defect Notice** has the meaning set out in Clause 35.10;
- EU SCCs** mean Standard Contractual Clauses for the transfer of Personal Data to third countries pursuant to the GDPR approved by the Commission Implementing Decision (EU) 2021/914 of 4 June 2021 and incorporated by reference into this Contract; as amended or replaced from time to time by a competent authority under the relevant Data Protection Legislation;
- EU Restricted Transfer** means a transfer of Personal Data (or any onward transfer), where such transfer would be prohibited by the GDPR in the absence of the protection for the transferred Personal Data provided by the EU SCCs;
- Good Industry Practice** means the exercise of the degree of skill, care, prudence, efficiency, foresight and timeliness which would reasonably be expected from a person skilled and experienced in providing hardware, software and services similar to the Goods, Software and Services;
- Goods, Software and Services** means all products, licenses, services, data, programmes, hardware, knowhow, training, guidance and support provided by Us and a reference to **Goods, Software or Services** will be interpreted accordingly;
- Index** means the Consumer Price Index as published from time to time by the UK Office of National Statistics or where such

- index ceases publication such other equivalent and comparable index as We reasonably specify;
- Indexation** means an increase or decrease (as the context requires) to the applicable prices by reference to the Index;
- Infringement Claim** has the meaning set out in Clause 32.21;
- Insolvency Event** means the presentation of a bankruptcy or winding-up petition against You, the appointment of a manager, receiver or administrator over all or any part of Your assets, the commencement of any winding-up process (other than for the purposes of reconstruction or amalgamation), the entry into or proposal of any form of arrangement or composition with Your creditors, and anything analogous to any of the foregoing in any jurisdiction;
- Losses** means all losses, liabilities, damages, costs, charges, and expenses;
- Microsoft Cloud Agreements** means the Microsoft Cloud NCE Agreement and Microsoft Cloud Solutions Provider Legacy Agreement;
- Microsoft Cloud Licenses** means the Microsoft licenses provided by Us or Microsoft in connection with Your Microsoft Cloud Services (CSP);
- Microsoft Cloud NCE Agreement** means the agreement details outlining Your Order to Us for the new commerce experience Microsoft Cloud Licenses;
- Microsoft Cloud Services (CSP)** means the provision of Microsoft services invoiced by Us to You which are purchased from Microsoft by Us under either: (i) Our Microsoft Cloud Solutions Provider Legacy Agreement including Microsoft 365 services, Azure services and Microsoft reserved instances; or (ii) Microsoft Cloud NCE Agreement, including Microsoft 365 and its associated products and licenses which can be purchased on a fixed term or flexible basis;
- Microsoft Cloud Solutions Provider Legacy Agreement** means Our agreement or other arrangement with Microsoft for the provision of legacy Microsoft Cloud Services and Microsoft Cloud Licenses;
- Microsoft Terms** has the meaning set out in Clause 29.2;
- New IPR** has the meaning set out in Clause 10.2;
- Notification Failure** has the meaning set out in Clause 32.21;
- Order** means Your request for Goods, Software and Services;
- Personnel** means employees, agents, consultants and sub-contractors;
- Personal Data** has the meaning given to it in Data Protection Legislation;
- PID** has the meaning set out in Clause 31.8;
- Project Co-Ordination Fee** means a ten per cent (10%) fee calculated by reference to the total price of the Consulting Services as set out in the relevant PID or SoW which applies to all Consulting Services in order to provide the Project Co-Ordination Service;
- Project Co-Ordination Service** means the provision of organisation and administrative services by a project coordinator;
- Project Management Fee** means a twenty per cent (20%) fee calculated by reference to the total price of the Consulting Services as set out in the relevant PID or SoW which applies to all Consulting Services in order to provide the Project Management Service;
- Project Management Service** means the provision of organisation, management and administrative services by a project manager;
- Related Service Providers** means Our partners, affiliates and other third parties that provide goods, software or services in connection with the Contract, including Microsoft;
- Relevant Information** has the meaning set out in Clause 3.2;
- Relevant Premises** means Your place of business or any other premises where Our Goods, Software and Services are to be installed and used;
- Service Agreement** means specific quantitative and qualitative performance standards and commitments for the Goods, Software and Services, including service levels and dates and times;
- Service Specific Terms** has the meaning set out in Clause 2.2;
- Software Development Services** means custom software development and integration services provided by Us to You on a chargeable day rate to complete agreed software development work;
- Solicited Employee** has the meaning set out in Clause 19.2;

SoW has the meaning set out in Clause 31.8;

Support and Managed Services means the supporting services provided by Us to manage, support and maintain the technologies agreed between You and Us;

Support and Managed Services Time Bank has the meaning set out in Clause 33.6;

Terms and Conditions means these general terms and conditions for software, hardware and IT support and consultancy;

Third Party IPR means all intellectual property rights owned by or licensed to a third party including intellectual property rights in open source software and intellectual property rights of Related Service Providers;

Transparency IPR has the meaning set out in Clause 10.1;

Transparency Materials means any information, documentation or other materials provided by Us to You in connection with the provision of the Goods, Software and Services (but excluding any Developed Software Documentation);

UK Addendum means the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses issued by the UK Information Commissioner under section 119A(1) Data Protection Act 2018;

UK Data Protection Legislation means the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (UK GDPR), together with the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) and other data protection or privacy legislation in force from time to time in the United Kingdom;

UK Restricted Transfer means a transfer of Personal Data (or any onward transfer), where such transfer would be prohibited by the UK GDPR in the absence of the protection for the transferred Personal Data provided by the UK Addendum;

We and Us means Transparency Solutions Limited (trading as Transparency), registered office: 9 Nimrod Way, East Dorset Trade Park, Wimboborne, Dorset BH21 7UH. Registered in England No. 09420434 and reference to **Our** will be construed accordingly; and

You means the person contracting to obtain Goods, Software and Services from Us under the Contract and where **You** means more than one (1) person, each of You is jointly and severally liable for each of the obligations under the Contract and reference to **Your** will be construed accordingly.

Interpretation

1.2 In the Contract (unless the context requires otherwise):

- 1.2.1 the words **including, include, for example, in particular** and words of similar effect will be construed so that they do not limit the general effect of the words which precede them;
- 1.2.2 words importing the singular will include the plural and vice versa;
- 1.2.3 any rule of interpretation that is contrary to common sense does not apply to the Contract;
- 1.2.4 references to a **Clause** are references to the clauses of these Terms and Conditions;
- 1.2.5 Clause headings are merely a guide and are not intended to be a part of the Contract; and
- 1.2.6 references to any one gender do not exclude other genders and general references to a **person** will be understood to include (as applicable), a natural person, a company, a partnership, and an unincorporated association (in each case whether or not having separate legal personality).

YOUR CONTRACT

General

- 2.1 The relationship between You and Us, including the Goods, Software and Services We agree to supply to You from time to time will be governed wholly by the following (the **Contract**) (and in the following order of precedence, highest to lowest):
 - 2.1.1 all applicable Service Specific Terms, including any separate specific Service Agreement and the Microsoft Cloud Agreements, and all documents specifically referred to in any of them; and

2.1.2 these Terms and Conditions, including any applicable Orders and all other documents specifically referred to in these Terms and Conditions,

save that where the conflict or inconsistency relates to the price of the Goods, Software and Services or the term of this Contract or Our liability under this Contract or Your termination rights under this Contract then Clauses 8, 9 and 17 (as applicable) in these Terms and Conditions will take precedence over any other terms to the contrary.

Service Specific Terms

2.2 The Goods, Software and Services We agree to supply to You may be subject to service specific terms and conditions from time to time relating to Your access and/or use of the applicable Goods, Software and Services (**Service Specific Terms**) due to the nature of the Goods, Software and Services or because We provide the Goods, Software as Services as a reseller for a Related Service Provider.

2.3 Service Specific Terms applicable to the Goods, Software and Services are set out or referred to in 'Part B: Service Specific Terms' to these Terms and Conditions. We will provide You with details of any updates to the Service Specific Terms.

Related Service Providers

2.4 You acknowledge that certain Goods, Software and Services may be provided by Related Service Providers as part of a multi-supplier environment where We act as a reseller of Goods, Software and Services. Accordingly, You will co-operate with and assist each such Related Service Providers.

Marketing materials and proposals

2.5 We will ensure that all marketing materials and proposals provided by Us to You are prepared in good faith.

2.6 Any marketing materials and proposals (including all associated documentation, estimates, quotations, correspondence and information) provided by Us to You are for information purposes only.

2.7 Any information contained in marketing materials or proposals, including any description of the Goods, Software and Services, the price of the Goods, Software and Services and how We intend to provide the Goods, Software and Services, that is intended to form part of the Contract or an Order will be expressly set out in or expressly referred to in these Terms and Conditions or the Service Specific Terms for the relevant Goods, Software or Services.

Changes

2.8 Us or Our Related Service Providers may change the terms (including the specification) of the Goods, Software and Services from time to time.

2.9 If any change by Us or Our Related Service Providers has a material adverse effect on the functionality, performance or quality of the Goods, Software or Services then if We are permitted by the Related Service Provider We will allow You to terminate the affected Goods, Software and Services.

2.10 If You request Us to change the terms (including the specification) of the Goods, Software or Services after Your Order has been placed, We may consider doing so at Our discretion, and any such alteration may be subject to an increase of the price.

3. YOUR ORDERS

General

3.1 You will ensure that the terms of Your Order are complete and accurate.

Relevant Information

3.2 You confirm at the time of placing each of Your Orders that You have given Us all necessary and relevant information that You hold and any further information that You suspect may make the supply of Goods, Software or Services under Your Order significantly more difficult to make or carry out (**Relevant Information**).

3.3 You will promptly give Us any Relevant Information that You become aware of after placing Your Order that You have not at the relevant time given to Us in accordance with Clause 3.2.

Order cancellation

3.4 Subject to Clause 3.6, if You wish to cancel Your Order for Goods, Software or Services, You may provide Us with written notice of Your request to cancel Your Order within fourteen (14) days of placing Your Order. You may cancel Your Order for Goods, Software and Services outside this fourteen (14) day period as set out in the Service Specific Terms.

3.5 If We agree to Your request to cancel Your Order, You will be required to pay Us for the proportion of Your Order which We have fulfilled as at the date of cancellation (if any) and any direct Losses that We incur as a result of Your cancellation, such as early termination fees from Our Related Service Providers (if any). We will inform You of the sums required to be paid by You if You wish to cancel Your Order.

3.6 Your right in Clause 3.4 will not apply to any Microsoft Cloud Licenses purchased under the Microsoft Cloud NCE Agreement which can only be cancelled in accordance with section 8 of the Microsoft Cloud NCE Agreement.

Resource cancellation

3.7 If You book resources, either through placing a new Order or calling off from an existing pre-paid arrangement, and these are cancelled or rescheduled by You on twenty (20) working days' notice or less prior to the date such resources were scheduled, We will endeavour to reallocate the resource to other projects but reserve the right to charge the following cancellation fees based upon the amount of notice given prior to the date such resources were scheduled.

Notice (working days) *	Cancellation fees
1 - 5	100%
6 - 10	75%
11- 14	50%
15 - 20	25%

* Notice received after 9:30 am on a working day will be deemed to be received the following working day.

4. OUR OBLIGATIONS

General

4.1 We will supply the Goods, Software and Services and perform Our other obligations under the Contract in accordance with the following (and in the following order of precedence, highest to lowest):

4.1.1 all applicable laws; and

4.1.2 Good Industry Practice.

5. YOUR OBLIGATIONS

General

5.1 You will:

5.1.1 co-operate with Us in all matters relating to the Contract and provide Us and Our Personnel with such information, access and materials as Us or Our Personnel may reasonably require in order to supply the Goods, Software and Services;

5.1.2 prepare the Relevant Premises for the supply of the Goods, Software and Services as specified by Us in any documents forming the Contract;

5.1.3 other than the licenses We agree to supply to You under the Contract, obtain and maintain all other licenses, permissions and consents which may be required for You to receive and use the Goods, Software and Services;

5.1.4 comply with all applicable laws in connection with the Contract and the performance of Your obligations under the Contract; and

5.1.5 keep all materials, equipment, documents and other property of Us or Our Personnel that are provided to You or at any Relevant Premises in good condition and in safe custody at Your own risk. Additionally, You will not dispose of, or use, the same other than in accordance with Our written instructions or authorisation.

Customer Cause

5.2 If the performance of any of Our obligations under the Contract or any of Our contracts with Related Service Providers is prevented or delayed by any act or omission by You (**Customer Cause**), in particular a failure to provide Your instructions or appropriate administrative access, then, You will inform Us promptly upon becoming aware of the Customer Cause and without limiting or affecting any other right or remedy available to Us:

5.2.1 We will have the right to suspend the supply of Goods, Software and Services that are affected by the Customer Cause until You remedy the Customer Cause to Our reasonable satisfaction. We may terminate the affected Goods, Software or Services if

You fail to remedy the Customer Cause within a period that is acceptable to Us acting reasonably;

5.2.2 We may rely on the Customer Cause to relieve Us from any non-performance or delay in performance of Our obligations to the extent those obligations are affected by the Customer Cause. Accordingly, We will not be liable for any Losses sustained or incurred by You as a result of any non-performance or delay in performance of any of Our obligations affected by a Customer Cause; and

5.2.3 You will reimburse Us for any Losses sustained or incurred by Us arising from the Customer Cause.

5.3 Your obligations under Clause 5.2 will remain in effect and enforceable after the Contract has terminated.

6. SUB-CONTRACTING

General

6.1 Save as permitted by Clauses 2.4 and 6.2, You and Us will not delegate the performance of the respective obligations of You and Us to a third party without the prior written consent of the other (not to be unreasonably withheld or delayed).

6.2 You consent to Us delegating the supply of the Goods, Software and Services We have agreed to supply to You under the Contract and You consent to Us from time to time using consultants that are not full-time staff of Us and Related Service Providers to deliver part or all of the Goods, Software and Services to You.

Responsibility

6.3 We will be responsible for all acts and omissions of Our sub-contractors and the acts and omissions of those employed or engaged by Our sub-contractors as if such acts and omissions were Our own.

7. THIRD PARTY RECOMMENDATIONS

General

We may from time to time as part of performing Our obligations under the Contract recommend or suggest that another person or company carries out work outside of the Contract. You acknowledge that the success of the work will depend upon You and the third party and that such risks, skills and conditions are not in any way guaranteed or underwritten by Us. Accordingly, You will need to carry out Your own investigations to ensure that any person recommended by Us satisfies Your requirements. You are free to instruct any other person that You may decide is suitable to complete the work.

8. OUR LIABILITY

Excluded liability

8.1 Subject to Clause 8.3, We do not accept liability for:

8.1.1 indirect or consequential Loss of any kind;

8.1.2 any Loss of any kind relating to the loss of data in any format however it is stored (whether direct or indirect). Accordingly, You assume all responsibility for the correct storage of data and for ensuring that the data is sufficiently protected and backed up. We are not liable for any failure of data backups, storage devices or cloud storage services;

8.1.3 any Loss or incompatibility of third party software (whether direct or indirect). All third party software will be installed at Your sole discretion and risk; and

8.1.4 for any Loss arising from hardware faults or hardware related issues (whether direct or indirect).

Our liability cap

8.2 Subject to Clauses 8.1 and 8.3, Our total aggregate liability for all Losses incurred or suffered by You arising under or in connection with the Contract will be limited to one hundred per cent (100%) of all amounts paid by You under the Contract in the previous twelve (12) months or, where an event giving rise to Loss occurs prior to You having paid any amounts to Us, a sum equivalent to amounts invoiced or payable for the then current month.

Unlimited liability

8.3 Nothing in the Contract limits or excludes a party's liability:

8.3.1 to the extent that it cannot be legally limited or excluded by applicable law;

8.3.2 for death or personal injury arising out of its negligence or that of its Personnel; and

8.3.3 for Losses suffered by the other party arising out of the first party's (or its Personnel's) fraud or fraudulent statement.

9. PRICE AND PAYMENT

Price

9.1 The prices specified in the quotation or otherwise agreed between You and Us from time to time are exclusive of VAT and other applicable taxes or duties unless specifically stated. You will be liable to pay all applicable VAT and taxes incurred in relation to the Goods, Software and Services supplied under the Contract.

Payment

9.2 You must pay Us in full the prices specified in the quotation or as otherwise agreed between You and Us in accordance with the payment terms or payment dates specified in the quotation or as otherwise agreed between You and Us. If no payment terms or payment dates are referred to in the quotation the price will be payable as required by Us.

Late payment

9.3 If You fail to make a payment due to Us under the Contract by the applicable due date for payment, without limiting Our other remedies under the Contract, You shall pay interest on the overdue sums. Interest will accrue from the due date until payment of the overdue sum is made to Us. Interest under this Clause 9.3 will accrue at four per cent (4%) a year above the Bank of England's base rate from time to time, but at four per cent (4%) a year for any period when that base rate is below zero per cent (0%).

9.4 If You fail to make a payment due to Us under the Contract for Goods, Software and Services within thirty (30) days of the applicable due date for payment, without limiting Our other remedies under the Contract, We have the right to suspend the supply of the affected Goods, Software and Services.

Set-off and withholding

9.5 All amounts due under the Contract must be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by applicable law).

9.6 If You are required to make any deduction or withholding by applicable law then the amount payable shall be increased by such amount as is necessary to make the actual amount received (after such deduction or withholding) equal to the amount that would have been received by Us had no deduction or withholding been required.

VAT

9.7 All payments under this Contract exclude amounts in respect of VAT which, if applicable, will be paid in addition at the relevant rate from time to time.

9.8 Where We have undercharged You the VAT that should have been due on an Order, You will be liable to pay Us the outstanding VAT immediately.

9.9 Where We have overcharged You VAT, We shall refund You the amount that You have overpaid within a reasonable period of time from when We are made aware of the overpayment.

Related Service Provider price

9.10 You acknowledge that the price may be subject to change if a Related Service Provider increases the price of its goods, software or services that are used to provide the Goods, Software and Services under or in connection with the Contract.

Indexation

9.11 You acknowledge that the price may be subject to change by Us in March of each year to reflect Indexation. Such Indexation shall apply by reference to the Index as at 28 February (that is to say by reference to the percentage increase (if any) in the Index over the preceding twelve (12) months) in each year.

10. INTELLECTUAL PROPERTY RIGHTS

Ownership

10.1 All intellectual property rights owned by or licensed to Us which:

10.1.1 existed before entering into the Contract; and

10.1.2 which have come into existence, other than in connection with the Goods, Software and Services, after entering into the Contract,

will remain vested in (or, as the context requires, will be owned by) Us or Our licensors (as applicable) (**Transparency IPR**).

10.2 Save as set out in Clauses 32.19 and 35.6, all intellectual property rights in or arising out of or in connection with the Goods, Software and Services (other than intellectual property

rights in any materials provided by You) (**New IPR**) will be owned by Us or Our licensors.

10.3 Save as set out in Clauses 32.19 and 35.6, should any New IPR vest in You as a result of the Contract, You agree to assign to Us with full title guarantee (including by way of present assignment of future intellectual property rights) all New IPR. You shall, at Our request, execute (and procure that third parties execute) all documents requested by Us so as to confirm Our title in such New IPR.

License

10.4 Subject to any specific restrictions or other applicable terms in the Service Specific Terms, We will grant to You or will procure the direct grant to You of, a fully paid-up, worldwide, non-exclusive, royalty-free license during the term of the Contract to copy the deliverables (excluding materials provided by You) for the purpose of receiving and using the Goods, Software and Services and the deliverables in Your business. You will not sub-license, assign or otherwise transfer the rights granted in this Clause 10.4.

10.5 You will grant Us a fully paid-up, non-exclusive, royalty-free, non-transferable license to copy and modify any materials provided by You for the term of the Contract for the purpose of providing the Goods, Software and Services to You.

11. TIME FOR PERFORMANCE

General

We shall endeavour to meet any performance dates specified in the Contract, including any Service Agreement, but any such dates shall be estimates only and time shall not be of the essence for performance of any of Our obligations under the Contract.

12. INDEMNITY

General

Where We supply any Goods, Software or Services for You at Relevant Premises, You agree to indemnify Us and keep Us indemnified against any Loss arising out of the physical injury or death of any of Our Personnel arising in any way from provision of defective equipment by You, Your failure to provide a safe system of work or otherwise by reason of any negligent act or default by You or Your Personnel.

13. ASSIGNMENT

General

13.1 Save as specifically permitted in Clause 13.2 or elsewhere in the Contract, neither You or Us may assign the benefit of any part of the Contract without the written consent of the other.

13.2 We may assign the benefit of any debt owed to Us by You to any third party at any time.

14. DATA PROTECTION AND DATA PROCESSING

General

14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

14.2 You and Us acknowledge that for the purposes of the Data Protection Legislation, You are the Controller and We are the Processor (where Controller and Processor have the meanings as defined in the Data Protection Legislation).

14.3 You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to Us for the duration and purposes of the Contract.

14.4 We shall, in relation to any Personal Data processed in connection with the performance by Us of Our obligations under the Contract:

14.4.1 process that Personal Data only on the written instructions of You unless We are required by any applicable laws to which we are subject, in which case, We shall promptly notify You of this before performing the processing required by the relevant applicable laws unless those applicable laws prohibit Us from so notifying You;

14.4.2 ensure that We have in place appropriate technical and organisational measures, reviewed and approved by You, 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 Our 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 Us);

14.4.3 ensure that all Personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

14.4.4 notify You without undue delay on becoming aware of a Personal Data Breach (as defined by the Data Protection Legislation);

14.4.5 notify You of any communication from a Data Subject regarding the processing of Personal Data, or any communication from a supervisory authority relating to any obligation under the Data Protection Legislation in respect of the Personal Data and, taking into account the nature of the processing and information available to Us, reasonably assist You by applying appropriate technical and organisational measures, insofar as this is possible, to assist in fulfilling Your obligation to respond to requests for exercising the Data Subject's rights;

14.4.6 assist You with Your obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and information available to Us;

14.4.7 make available to You on request all information necessary to demonstrate Our compliance with this Clause 14 and with Article 28 of the GDPR, and You may, at Your expense and not more than once per year, perform an audit in relation to these same provisions with written notice reasonably, but at least fifteen (15) working days, in advance, such audit to take place over not more than one day during Our normal business hours on a mutually agreed schedule that will minimise the audit's impact on Our operations;

14.4.8 at Your written direction, delete or return Personal Data and copies thereof to You on termination of the Contract unless required by applicable Data Protection Legislation to store the Personal Data.

14.5 You hereby provide Us with general authorisation to appoint third party processors of Personal Data under the Contract. We confirm that We have entered, or (as the case may be) will enter with any third party processors, into a written agreement incorporating terms which are substantially similar to those set out in this Clause. We shall inform You of any intended changes concerning the addition or replacement of Our third party processors by way of notice, with such change to be effective 10 (ten) working days following the delivery of this notice, unless You raise an objection to the proposed change during that notice period. As between You and Us, We shall remain fully liable for all acts or omissions of any third party processor appointed by Us pursuant to this Clause 14.

14.6 Subject to Clause 14.5, We shall not transfer any Personal Data to locations outside of the United Kingdom and the European Economic Area until the following conditions are fulfilled:

(i) You or We have provided appropriate safeguards in relation to the transfer;

(ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;

(iii) We comply with Our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) We comply with reasonable instructions notified to Us in advance by You with respect to the processing of the Personal Data.

14.7 Subject to Clauses 14.5 and 14.6, in respect of any of any third party processors appointed by Us, insofar as that engagement involves:

(i) a UK Restricted Transfer, We shall ensure the relevant provisions of the UK Addendum are at all relevant times entered into between Us (as Your Processor) and each third party processor to ensure the adequate protection of the transferred Personal Data; or

(ii) an EU Restricted Transfer, We shall ensure the relevant Module of the EU SCCs are at all relevant times entered

- into between Us (as Your Processor) and each third party processor to ensure the adequate protection of the transferred Personal Data.
- 14.8 For the purposes of Article 28(3) of the GDPR, the processing of Personal Data to be carried out by Us on Your behalf in connection with this Contract shall be as follows:
- 14.8.1 **Subject matter and duration of processing:** For the delivery of the Goods, Software and Services;
- 14.8.2 **Nature and purpose of processing:** As necessary for the delivery of the Goods, Software and Services;
- 14.8.3 **Type of Personal Data:** Names, contact details and such other data as is provided by You or on Your behalf in the context of your receipt of the Goods, Software and Services;
- 14.8.4 **Categories of Data Subject:** Your employees, contractors and other nominated end users of the Goods, Software and Services.
- 14.9 As explained in Clause 2.4, certain Goods, Software and Services may be provided by Related Service Providers. You acknowledge that any processing of Personal Data carried out by Related Service Providers will be as agreed between You and that Related Service Provider, and We will have no role (or control) in relation to such processing unless instructed by You in which case We will consult with You and act in accordance with Your written instructions as per Clause 14.4.1.
- 15. NOTICES**
- General**
- 15.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business, or sent by email to the address specified in the quotation documents.
- 15.2 Any notice shall be deemed to have been received:
- 15.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 15.2.2 if sent by pre-paid first-class 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; and
- 15.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 16. CONFIDENTIALITY AND PUBLICITY**
- General**
- 16.1 Each party undertakes that it shall not at any time during the Contract, and thereafter, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 16.2.
- 16.2 Each party may disclose the other party's confidential information:
- 16.2.1 to its employees, officers, representatives, sub-contractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this Clause 16; and
- 16.2.2 as may be required by applicable law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 16.4 You agree that We may from time to time:
- 16.4.1 refer to You as a customer of Us and to the types of Goods, Software and Services supplied to You in Our marketing material which may include a case study describing the Goods, Software and Services supplied by Us to You; and
- 16.4.2 use Your, logos, trade marks and trade names for the purpose of referring to You as Our customer in Our marketing materials.
- 17. TERM AND TERMINATION**
- Term**
- 17.1 The Contract will continue in force unless and until terminated in accordance with this Clause 17.
- Our termination rights**
- 17.2 The Contract may be terminated by Us in the following circumstances:
- 17.2.1 should any sums due to Us under the Contract remain unpaid for a period of sixty (60) days or more;
- 17.2.2 in the event that You fail to provide the staff that We supply to You under the Contract or any staff that are working at Relevant Premises, with a safe system of work or if You request that a member of staff works in conditions or with equipment which are in any way unsafe or hazardous;
- 17.2.3 where You fail to carry out any prerequisite work that needs to be completed at the Relevant Premises by You before We are able to implement and/or install any Goods, Software and Services, where We have specified to You and agreed a timeframe for the prerequisite works to be completed, and You fail to have such works completed by the agreed date without giving Us at least fourteen (14) days' notice of the delays;
- 17.2.4 You become subject to an Insolvency Event; and
- 17.2.5 in accordance with Clause 5.2.1.
- Your termination of the Contract**
- 17.3 You may terminate the Contract at any time if all Your Goods, Software and Services (including any Microsoft Cloud Licenses) have expired or have been terminated in accordance with the Contract and We do not supply any Goods, Software or Services to You under the Contract at the relevant time. For clarity, section 8 of the Microsoft Cloud NCE Agreement sets out how any Microsoft Cloud Licenses purchased under the Microsoft Cloud NCE Agreement can expire or be terminated.
- Your termination of Goods, Software and Services**
- 17.4 With the exception of any Microsoft Cloud Licenses purchased under the Microsoft Cloud NCE Agreement which will continue unless and until terminated in accordance with section 8 of the Microsoft Cloud NCE Agreement, You may terminate individual Goods, Software and Services or any affected element or part as set out in the these Terms and Conditions or the Service Specific Terms for the applicable Goods, Software or Services.
- 17.5 With the exception of any Microsoft Cloud Licenses purchased under the Microsoft Cloud NCE Agreement which will continue unless and until terminated in accordance with section 8 of the Microsoft Cloud NCE Agreement, You may terminate any individual Goods, Software and Services or any affected element or part, if an act or omission by or on behalf of Us means that:
- 17.5.1 We commit a material breach in respect of any of Our obligations relating to the applicable Goods, Software and Services that is incapable of remedy; or
- 17.5.2 We commit a material breach in respect of any of Our obligations relating to the applicable Goods, Software and Services that is capable of remedy and We fail to remedy or procure the remedy of the breach within thirty (30) days of Your request for Us to do so,
- provided that the matter has first been referred to the resolution procedure referred to in Clause 28 and You have not found the outcome satisfactory.
- General**
- 17.6 In any of the circumstances in Clause 17.2 in which We may terminate the Contract, We may instead terminate any element or part of the Goods, Software and Services.
- 17.7 Where We terminate all or part of Contract pursuant to Clause 17.2 as a result of Your acts or omissions, We will no longer be under any obligation to do any work for You in relation to the terminated parts of the Contracts, and You will immediately become liable to pay Us all sums which You owe Us for the terminated Goods, Software and Services. Additionally, You will pay Us a reasonable sum representing the work We have done up to the date of termination in relation to the terminated Goods, Software or Services, which will be calculated to include the loss of anticipated profit for the terminated Goods, Software and Services.
- 18. FORCE MAJEURE**
- General**
- Neither party shall be in breach of the contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 19. NON SOLICITATION**
- General**
- 19.1 Neither party shall, and shall procure that its Personnel shall not, during the term of the Contract and for twelve (12) months following the termination or expiry of the Contract either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the other party's employment any of the other party's employees who at the time of such solicitation or enticement is or was engaged by that other party under or in connection with the Contract in the twelve (12) months immediately preceding such solicitation or enticement.
- 19.2 If a party (**Breaching Party**) employs a person in breach of Clause 19.1 (**Solicited Employee**), then without prejudice to any of the other party's other rights or remedies, the Breaching Party shall on demand pay to the other party an amount equivalent to thirty per cent (30%) of the gross annual salary or annual contract fees of the Solicited Employee, being such salary or fees in place immediately prior to such solicitation or enticement.
- 20. ENTIRE AGREEMENT**
- General**
- 20.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 You and Us acknowledge that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 20.3 Nothing in this Clause 20 shall limit or exclude any liability for fraud.
- 21. THIRD PARTY RIGHTS**
- General**
- Unless expressly stated otherwise, a person who is not a party to the Contract will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 22. GOVERNING LAW**
- General**
- The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 23. JURISDICTION**
- General**
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 24. VARIATION**
- General**
- Except as set out in these Terms and Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties.
- 25. WAIVER**
- General**
- A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the

Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

26. SEVERANCE

General

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.

27. NO PARTNERSHIP OR AGENCY

General

27.1 Nothing in the Contract 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 another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

27.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

28. DISPUTES

General

28.1 Any dispute which may arise between the parties concerning the Contract shall be determined as provided in this Clause 28.

28.2 For the purpose of this Clause 28, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.

28.3 Unless the Contract has already been terminated by the date of the notice of dispute, We shall, in every case, continue with the supply of the Goods, Software and Services regardless of the nature of the dispute and You shall continue to make payments (excluding any disputed sums) in accordance with the Contract.

28.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this Clause 28.4 shall be extendable by mutual agreement):

28.4.1 within two (2) days, Our project manager and Your representative shall meet to attempt to settle the dispute;

28.4.2 if Our project manager and Your representative are unable to reach a settlement within seven (7) days from the date of service of the notice, the managing directors of each of the parties shall meet within the following seven (7) days to attempt to settle the dispute; and

28.4.3 if no settlement results from the meeting specified in Clause 28.4.2, for the following twenty eight (28) days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.

28.5 If no settlement is reached under Clause 28.4:

28.5.1 if the dispute is of a technical nature concerning the interpretation of the business requirements specification or technical specification or any similar or related matter then such dispute shall be referred for arbitration. The arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his or her fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees;

28.5.2 in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English Courts in the most expeditious manner possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings; and

28.5.3 in any other case, the dispute shall be determined by the English Courts and the parties submit to the exclusive jurisdiction of such court for such purposes.

PART B: SERVICE SPECIFIC TERMS

29. MICROSOFT CLOUD SERVICES (CSP) LEGACY TERMS

General

29.1 This section sets out the Service Specific Terms that You and Us agree will apply where We agree to supply Microsoft Cloud Services and provide, or procure, the provision of Microsoft Cloud Licenses through Our Microsoft Cloud Solutions Provider Legacy Agreement.

29.2 The terms of the United Kingdom, Corporate, Microsoft Customer Agreement found at www.microsoft.com/licensing/docs/customeragreement, will apply at all times to the supply of Microsoft Cloud Services and Microsoft Cloud Licenses under the Contract by Us or Our Related Service Provider Microsoft (**Microsoft Terms**). The Microsoft Terms will form part of the Contract between You and Us relating to Microsoft Cloud Services and Microsoft Cloud Licenses.

Microsoft Cloud Services and Microsoft Cloud Licenses

29.3 A description of the Microsoft Cloud Services and Microsoft Cloud Licenses We will provide to You and how We intend to provide the Microsoft Cloud Services and Microsoft Cloud Licenses to You will be as set out in the Microsoft Terms and any applicable specific Service Agreement from time to time.

29.4 The price for the Microsoft Cloud Services and Microsoft Cloud Licenses will be as set out or otherwise referred to in Microsoft's published price list from time to time.

Additional Services

29.5 You will be given access to the 'Transparency Control Centre' and Our 'Service Desk Resource' where You can add and remove or instruct Us to add or remove Microsoft Cloud Services and Microsoft Cloud Licenses. You will pay for all Microsoft Cloud Services and Microsoft Cloud Licenses added by You via the 'Transparency Control Centre' and that You instruct Us to add via the 'Service Desk' resource.

29.6 A description for Our 'Value-Added Support Services' is available upon request.

29.7 You agree to provide and maintain the permissions needed to enable Us to supply the Microsoft Cloud Services, this includes administrative access to in scope services and subscriptions for Our Personnel. Details relating to the security controls implemented by Us to secure access to Your environment(s) are available on request.

Cancellation

29.8 You may cancel all or part of Your Microsoft Cloud Licenses at any time, without additional charge, as long as You commit to a minimum term of twelve (12) months for at least one (1) Microsoft Cloud License of each type of Microsoft Cloud License that You consume immediately prior to such cancellation.

29.9 You may cancel Your Microsoft Cloud Services (including Microsoft reserved instances that typically have a one (1) or three (3) year commitment) at any time as long as You commit to reimburse Us for any termination charges or similar that are levied against Us by Our Related Service Provider Microsoft as a result of Your cancellation.

29.10 We will at all times permit You to cancel Your Microsoft Cloud Licenses and Microsoft Cloud Services as set out in these Service Specific Terms at Clauses 29.8 and 29.9 for as long as Our Related Service Provider Microsoft permit Us to cancel on these terms under Our Microsoft Cloud Solutions Provider Legacy Agreement.

Migration

29.11 Where Microsoft Cloud Services are migrated by Us without additional charge (e.g. the migration is not paid for by You as Consulting Services or otherwise), We will provide the migration of the Microsoft Cloud Services on a reasonable endeavours basis.

29.12 Where Microsoft Cloud Services are migrated by Us without additional charge, should You terminate those Microsoft Cloud Services within a twelve (12) month period We reserve the right to charge for the time spent in migrating the Microsoft Cloud Services based upon Our rate card at that time.

30. MICROSOFT CLOUD SERVICES (CSP) NCE TERMS

General

30.1 The Service Specific Terms that You and Us agree will apply where We agree to supply Microsoft Cloud Licenses through Our Microsoft Cloud NCE Agreement will be those terms as set out in the Microsoft Cloud NCE Agreement.

31. CONSULTING SERVICES

General

31.1 This section sets out the Service Specific Terms that You and Us agree will apply where We agree to supply Consulting Services to You.

Consulting Services

31.2 A description of the Consulting Services We will provide to You and how We intend to provide the Consulting Services to You will be as set out in the PID or SoW. Any PID or SoW provided by Us will form part of the Contract between You and Us relating to Consulting Services.

31.3 We will provide You with the Consulting Services set out in the PID or SoW (as applicable) in all material respects and will provide the Consulting Services in accordance with Good Industry Practice.

31.4 Subject to Clauses 9.10, 9.11 and 31.5, the price for the Consulting Services will be as set out or otherwise referred to in the PID or SoW plus the Architect Assurance Service Fee unless the Consulting Services involve Development Services in which case the price for such Consulting Services will be on a time and materials basis and any timelines and costs given for such Consulting Services are to be considered estimates. In addition to the foregoing, You will also be charged, as specified in the quotation, either the Project Co-Ordination Fee or Project Management Fee.

31.5 Any prices given for the Consulting Services are for Business Hours only. In the event Consulting Services are required outside of Business Hours the price for such Consulting Services will be charged at two (2) times the rate set out in the PID or SoW.

Consultancy Estimate

31.6 We will provide You with an initial estimate of the number of days of Consulting Services required based on Your requirements and the applicable day rate for those days (**Consultancy Estimate**).

31.7 You will provide Us with an Order based on Our Consultancy Estimate.

PID and SoW

31.8 We will complete a detailed scoping exercise after producing Our Consultancy Estimate and produce a defined Statement of Work (**SoW**) or Project Initiation Document (**PID**) confirming the number of days required to satisfy Your requirements and the applicable day rate for those days.

31.9 If the number of days required in the PID or SoW exceeds Our Consultancy Estimate We will ask You for Your approval of the number of days in the SoW or PID.

31.10 You will provide Your approval or rejection of any revised number of days of Consulting Services in the PID or SoW promptly following receipt.

31.11 If You approve the number of days for Consulting Services in the SoW or PID, We will invoice You based on the PID or SoW (as applicable) and You will pay in accordance with the applicable terms of the Contract.

31.12 If You reject the revised number of days for Consulting Services in the SoW or PID, You may cancel Your Order for the Consulting Services that are the subject of revision, provided that where We may invoice You for the number of days utilised by Us scoping Your requirements and providing associated documentation.

31.13 If the number of days required to satisfy Your requirements and the applicable day rate for those days as confirmed in the SoW or PID issued in accordance with Clause 31.8 remains the same, We will, subject to the terms of the Contract, charge You:

31.13.1 the price or the number of days stated in the relevant PID or SoW for the Consulting Services regardless of the number of days spent by Us; plus

31.13.2 the Architect Assurance Service Fee; plus

31.13.3 the Project Co-Ordination Fee or Project Management Fee (as specified in Your quotation).

31.14 Where Consulting Services are being funded (in part or full) on Your behalf by Microsoft, You are required to complete the Microsoft proof of execution documents, alongside completing any required steps in order for Us to be paid by Microsoft for these Consulting Services. In any event, should We not be paid for these services by Microsoft, You will be liable to pay for the days delivered, priced at Our rate card at the time.

Consultancy Time Bank

31.15 If You purchase days in advance for use later (**Consultancy Time Bank**), You must consume these days within twelve (12) months of their invoice date. We reserve the right to remove any remaining balance at any time on or after the expiration of such twelve (12) month period.

31.16 If all Consulting Services are completed or You terminate the Consulting Services as a result of any material breach by Us in respect of any of Our obligations relating to the Consulting Services, We will refund any unused days in Your Consultancy Time Bank as at the date of completion or termination upon request by You.

32. SOFTWARE DEVELOPMENT SERVICES AND DEVELOPED SOFTWARE SUPPORT SERVICES

General

32.1 This section sets out the Service Specific Terms that You and Us agree will apply where We agree to supply Software Development Services and, if applicable, Developed Software Support Services to You.

Software Development Services and Developed Software Support Services

32.2 A description of the Software Development Services and the acceptance tests relevant for the Developed Software will be as set out in the SoW. Any SoW provided by Us will form part of the Contract between You and Us relating to the Software Development Services.

32.3 A description of the Developed Software Support Services We will provide to You and how We intend to provide the Developed Software Support Services to You will be as set out in a separate specific Service Agreement. Any separate specific Service Agreement provided by Us will form part of the Contract between You and Us relating to Developed Software Support Services.

32.4 We will provide You with the Software Development Services set out in the SoW and the Developed Software Support Services set out in the specific Service Agreement in all material respects and in accordance with Good Industry Practice.

32.5 Subject to Clauses 9.10 and 9.11 and unless otherwise stated in the SoW, the price for the Software Development Services will be on a time and materials basis at the rates set out in the SoW and the price for the Developed Software Support Services will be on a time and materials basis at the rates set out in the separate specific Service Agreement. Any prices given for Software Development Services and Developed Software Support Services are for Business Hours only. In the event Software Development Services and/or Developed Software Support Services are required outside of Business Hours, the price for such Software Development Services and/or Developed Software Support Services will be charged at two (2) times the rate set out in the SoW.

Developed Software Support Services Time Bank

32.6 The hours for the Developed Software Support Services are purchased in advance for use later (**Developed Software Support Services Time Bank**). You must consume these hours within twelve (12) months of their invoice date. We reserve the right to remove any remaining balance at any time on or after the expiration of such twelve (12) month period. For the avoidance of doubt, hours cannot go into the negative and, accordingly, You are responsible for ensuring that You have sufficient hours on account so that We can provide the Developed Software Support Services to You.

32.7 If all Developed Software Support Services are completed or You terminate the Developed Software Support Services as a result of any material breach by Us in respect of any of Our obligations relating to the Developed Software Support Services, We will refund any unused hours in Your Developed Software Support Services Time Bank as at the date of completion or termination upon request by You.

Acceptance of the Developed Software

32.8 If agreed in the SoW that the Developed Software will be subject to acceptance testing then Clauses 32.9 to 32.17 will apply.

32.9 We will develop the acceptance tests and scripts.

32.10 You will review the acceptance tests and scripts promptly (and in any event within the period set out in the SoW or as otherwise agreed by You and Us). In the event You can demonstrate to Our reasonable satisfaction that the acceptance tests and scripts do not demonstrate the compliance of the Developed Software in all material respects

- with the relevant specification, We will amend them as soon as reasonably possible.
- 32.11 You will complete the acceptance tests during the period set out in the SoW which shall, unless expressly stated otherwise in that SoW, in no circumstances be a period greater than sixty (60) days (**Acceptance Period**).
- 32.12 During the Acceptance Period You will record and promptly notify Us of test observations where the results of the acceptance tests do not appear to match the expected results. Our software development manager (as appointed by Us from time to time) will review and classify those test observations as either faults, new requirements or acceptable faults.
- 32.13 Other than in respect of acceptable faults, We will correct all faults notified to Us as soon as reasonably possible after notification of them. For new requirements, We may consider carrying out such additional work at Our discretion, and any such work may be subject to an increase of the price. For the avoidance of doubt and subject to Clause 8.3, We will not be liable (and are not obliged to correct) any faults that arise as a result of:
- 32.13.1 You not following Our recommendations or instructions;
- 32.13.2 You combining the Developed Software with other software or hardware not approved by Us;
- 32.13.3 any materials or instructions provided to Us by You or on Your behalf; or
- 32.13.4 You using the Developed Software in breach of the Contract, (**Customer Faults**).
- 32.14 If the time taken to correct the faults causes a delay in the acceptance tests, then the Acceptance Period shall be extended by the length of such delay. We will use all reasonable endeavours to minimise such delays by re-planning acceptance tests where possible.
- 32.15 Acceptance of the Software and/or Software Development Services by You shall be deemed to occur as follows:
- 32.15.1 if agreed in the SoW that the Developed Software will be subject to acceptance testing, upon the earlier of the circumstances in Clause 32.15.3 applying or at the end of the Acceptance Period, except where a fault has been identified in accordance with Clause 32.12 which is not a Customer Fault and such fault remains uncorrected at the end of the Acceptance Period in which case acceptance is deemed to occur upon the earlier of the correction of such fault or the circumstances in Clause 32.15.3 applying; or
- 32.15.2 in the absence of any acceptance tests in respect of the Developed Software or part thereof, upon the earlier of the circumstances in Clause 32.15.3 applying, the performance of the Software Development Services or the delivery of the Developed Software by Us; and
- 32.15.3 if any of the Developed Software and/or the Software Development Services is used by You in production, upon such use of the Developed Software and/or Software Development Services.
- 32.16 Your acceptance of the Developed Software and Software Development Services in accordance with this Clause 32 will be conclusive evidence that You have examined the Developed Software and found it to be in accordance with the specification in all material respects.
- 32.17 In this Clause 32, **fault** means a material non-compliance of the Developed Software with the specification set out in the SoW, and **acceptable fault** means any non-compliance that is not a material non-compliance of the Developed Software with the specification set out in the SoW.
- Developed Software**
- 32.18 If reasonably requested by You, We shall provide a copy of the source code for the Developed Software and Developed Software Documentation following the acceptance of the Developed Software provided You have paid in full all sums which You owe Us.
- 32.19 All intellectual property rights in the Developed Software and Developed Software Documentation which are specifically created by Us for You as specified in the SoW (but excluding all Transparency IPR, Third Party IPR and any intellectual property rights in the Transparency Materials) (**Bespoke Software IP**) will vest in Us upon creation. Upon confirmation that payment in full has been made by You to Us of all sums which are owed and subject at all times to Clause 32.20, We will, if requested by You, assign to You the Bespoke Software IP.
- 32.20 You agree that in no circumstances will We be prevented from using any know-how, methods, code, techniques or procedures owned or developed by Us in the course of providing the Software Development Services and/or Developed Software for any purpose.
- 32.21 Subject at all times to Clause 32.23, if a claim or demand for infringement or alleged infringement of any intellectual property right is made in respect of the Software Development Services or Developed Software (or, in Our reasonable opinion, is likely to be made) (**Infringement Claim**) or if We fail to comply with Our obligations in Clause 32.24 (**Notification Failure**), We shall, at Our own expense and option, either:
- 32.21.1 modify or replace the Software Development Services and/or Developed Software so that they:
- (i) in the event of an Infringement Claim, cease to be infringing; or
- (ii) in the event of a Notification Failure, no longer require the use of the Third Party IPR;
- 32.21.2 procure the right for You to continue using, as contemplated by the SoW:
- (i) in the event of an Infringement Claim, the Software Development Services and Developed Software; or
- (ii) in the event of a Notification Failure, the Third Party IPR; or
- 32.21.3 if neither of the foregoing options is practicable, require You to return the affected Software Development Services and/or Developed Software to Us and We shall reimburse You for the amounts paid for such Software Development Services and/or Developed Software.
- 32.22 Subject to Clause 8.3, the remedies in Clause 32.21 represent Your exclusive remedies in respect of an Infringement Claim and/or a Notification Failure.
- 32.23 Subject to Clause 8.3, We shall have no liability for any Infringement Claim, where the cause of the infringement arises out of:
- 32.23.1 any materials or instructions provided to Us by You or on Your behalf;
- 32.23.2 modification, enhancement or alteration of Software Development Services and/or Developed Software by You or on Your behalf;
- 32.23.3 combination of the Software Development Services and/or Developed Software with other software or hardware not approved by Us; or
- 32.23.4 You using the Software Development Services and/or Developed Software in breach of the provisions of this Contract.
- 32.24 Licences and services provided by third parties that are required by You to enable You to use the Developed Software shall be identified by Us in the SoW.
- 32.25 You shall be responsible for arranging Your access to and use of such Third Party IPR. Accordingly, We shall not be liable for any delay or failure by You to procure access to and use of such Third Party IPR.
- 33. SUPPORT AND MANAGED SERVICES**
- General**
- 33.1 This section sets out the Service Specific Terms that You and Us agree will apply where We agree to supply Support and Managed Services to You.
- Support and Managed Services**
- 33.2 A description of the Support and Managed Services We will provide to You and how We intend to provide the Support and Managed Services to You will be as set out in a separate specific Service Agreement. Any separate specific Services Agreement provided by Us will form part of the Contract between You and Us relating to Support and Managed Services.
- 33.3 We will provide You with the Support and Managed Services in accordance with Good Industry Practice and any applicable separate specific Service Agreement from time to time.
- 33.4 Subject to Clauses 9.10 and 9.11, the price for the Support and Managed Services will be as set out or otherwise referred to in the separate specific Service Agreement.
- Duration**
- 33.5 The minimum term for Support and Managed Services will be one (1) year from the date of commencement of the Support and Managed Services. Thereafter, the Support and Managed Services will automatically renew for a subsequent twelve (12) month period at each anniversary unless and until terminated by You providing notice of Your intention not to renew the Support and Managed Services not less than ninety (90) days prior to the next anniversary of the Support and Managed Services.
- Time bank**
- 33.6 If You purchase days in advance for use later (**Support and Managed Services Time Bank**), You must consume these days within twelve (12) months of their invoice date. We reserve the right to remove any remaining balance at any time on or after the expiration of such twelve (12) month period.
- 33.7 If the Support and Managed Services expire and You choose not to renew Your Support and Managed Services, We reserve the right to remove any remaining balance at any time on or after the expiration.
- 33.8 If You terminate the Support and Managed Services as a result of any material breach by Us in respect of any of Our obligations relating to the Support and Managed Services, We will refund any unused days in Your Support and Managed Services Time Bank as at the date of completion or termination upon request by You.
- 34. HARDWARE**
- General**
- 34.1 This section sets out the Service Specific Terms that You and Us agree will apply where the supply of Goods, Software and Services by Us includes the sale of hardware in the applicable Order, SoW or PID.
- Hardware description**
- 34.2 We will supply hardware to You in accordance with the Hardware manufacturer's specification.
- 34.3 Risk in the hardware will pass on delivery but title will not pass until the price has been paid in full by You.
- 34.4 The price for the hardware will be as agreed between You and Us.
- 35. DATA SERVICES**
- General**
- 35.1 This section sets out the Service Specific Terms that You and Us agree will apply where We agree to supply Data Services to You.
- Data Services**
- 35.2 A description of the Data Services and the DS Acceptance Criteria will be as set out in the SoW. Any SoW provided by Us will form part of the Contract between You and Us relating to the Data Services.
- 35.3 We will provide You with the Data Services set out in the SoW in all material respects and in accordance with Good Industry Practice.
- 35.4 Subject to Clauses 9.10 and 9.11 and unless otherwise stated in the SOW, the price for the Data Services will be on a time and materials basis at the rates set out in the SoW. Any prices given for Data Services are for Business Hours only. In the event Data Services are required outside of Business Hours, the price for such Data Services will be charged at two (2) times the rate set out in the SoW.
- Data Service Deliverables**
- 35.5 We may create for You individual reports as part of the Data Services if agreed by Us and You in the SoW (**Data Service Deliverables**). Such Data Service Deliverables will be in the form agreed by Us and You in the SoW.
- 35.6 All intellectual property rights in the Data Service Deliverables which are specifically created by Us for You as specified in the SoW will vest in Us upon creation. Upon confirmation that payment in full has been made by You to Us of all sums which are owed and subject at all times to Clause 35.7, We will, if requested by You, assign to You the intellectual property rights in the Data Service Deliverables (but excluding all Transparency IPR, Third Party IPR and any intellectual property rights in the Transparency Materials).
- 35.7 You agree that in no circumstances will We be prevented from using any know-how, methods, code, techniques or procedures owned or developed by Us in the course of providing the Data Services and/or Data Service Deliverables for any purpose.

- 35.8 To the extent that a Data Service Deliverable incorporates Transparency IPR, We hereby grant You the non-exclusive and royalty-free right to use the relevant Transparency IPR in the Data Service Deliverables without any additional payment to be made to Us (unless otherwise stated in the SoW) for the sole purpose of continuing to use the Data Service Deliverables.
- Acceptance of Data Service Deliverables**
- 35.9 Each Data Service Deliverable will conform in all material respects with the description of that Data Service Deliverable set out in the SoW (**DS Acceptance Criteria**).
- 35.10 If You, acting reasonably, consider that a Data Service Deliverable does not meet the DS Acceptance Criteria, then You must notify Us in writing within ten (10) Business Days of receipt of the Data Service Deliverable from Us, setting out Your reasons in detail (a **DS Defect Notice**).
- 35.11 Upon receipt of a DS Defect Notice We will as soon as reasonably possible use all reasonable endeavours to alter the Data Service Deliverable so that it complies with the DS Acceptance Criteria. For the avoidance of doubt and subject to Clause 8.3, We will not however be liable (and are not obliged to correct) any failures to meet the DS Acceptance Criteria that arise as a result of:
- 35.11.1 You not following Our recommendations or instructions;
 - 35.11.2 You combining the Data Service Deliverable with other software or hardware not approved by Us;
 - 35.11.3 any materials or instructions provided to Us by You or on Your behalf; or
 - 35.11.4 You using the Data Service Deliverable in breach of the Contract.
- 35.12 Subject to Clause 8.3, the remedy in Clause 35.11 represents Your exclusive remedy in respect of any failure of a Data Service Deliverable to comply with the DS Acceptance Criteria.
- 35.13 Acceptance of the Data Service Deliverable by You shall be deemed to occur as follows:
- 35.13.1 if We do not receive a DS Defect Notice pursuant to Clause 35.10, on the earlier of: (i) notification by You of Your acceptance; (ii) the expiry of the ten (10) Business Day period set out in Clause 35.10; or (iii) the circumstances in Clause 35.13.3 applying;
 - 35.13.2 if We do receive a DS Defect Notice pursuant to Clause 35.10, on the earlier of: (i) the correction of the non-compliance; or (ii) the circumstances in Clause 35.13.3 applying;
 - 35.13.3 if the Data Service Deliverable is used by You in live use or production, upon such live use or production of the Data Service Deliverable.

Part C: USE OF ARTIFICIAL INTELLIGENCE SYSTEMS

36. GENERAL

36.1 To supplement and enhance our service-delivery, We may use AI Systems (as defined below), provided by third party providers or developed in-house by Us, in our provision of the Goods, Software and Services. In the event that We do use such AI Systems, We will do so in accordance with the provisions of this 'Part C: Use of Artificial Intelligence Systems.'

36.2 Likewise, where our provision of Goods, Software or Services specifically includes Us assisting in the development or implementation of AI Systems We will do so in accordance with the provisions of this 'Part C: Use of Artificial Intelligence Systems.'

37. Definitions

37.1 For the purposes of this 'Part C: Use of Artificial Intelligence Systems', the below terms shall be defined as follows:

37.1.1 "AI Policy" has the meaning provided in Clause 38.1;

37.1.2 "AI System" means a system designed to perform tasks or operations with elements of autonomy that would otherwise require human involvement, and which is developed and trained using a knowledge base of data and inputs, on which the AI system makes inferences to achieve objectives using advanced analytical techniques to produce system-generated Outputs (as defined below);

37.1.3 "AI User" means any Personnel within our organisation that may use, interact with, develop or implement an AI System; and

37.1.4 "Outputs" means the outputs (including but not limited to data, text, sound, video, image, code, or other content) generated by an AI System for a particular use case in response to an input.

38. Principles and Values

38.1 We maintain a comprehensive AI policy, which We will amend and update from time to time in order to ensure that We continuously comply with changes in applicable artificial intelligence regulation. This policy, which may be updated from time to time, is available here: <https://www.transparency.com/wp-content/uploads/2024/12/Policy-AI-External.pdf>.

38.2 We, and our AI Users will, adhere to the principles set out in the AI Policy wherever possible in our use, deployment, and development of AI Systems.

38.3 Where We become aware of any non-compliance with the AI Policy by an AI User, we will investigate such claims and may take appropriate action against such individuals in accordance with our internal policies and procedures.

38.4 If You have any queries or concerns about our use of AI Systems, please contact hello@transparency.com.

39. Use Cases

39.1 We may deploy AI Systems, in the provision of the Goods, Software and Services, for particular use cases.

39.2 You hereby consent to Us using AI Systems in the provision of the Goods, Software and Services for the use cases that may be communicated to You by Us from time to time.

40. Ownership of Rights

40.1 Subject to Clauses 40.2 and 40.3 below, all New IPR, including any intellectual property rights in any Outputs, will be owned by Us or our licensors (as applicable).

40.2 Subject to Clause 40.3 below, in the event that any intellectual property rights in any Output vests in You as a result of applicable law or the Contract, You agree to assign to Us with full title guarantee (including by way of present assignment of future intellectual property rights) all such intellectual property rights in any Output.

40.3 To the extent any deliverables incorporate any Outputs owned by Us in accordance with Clauses 40.1 – 40.2 (inclusive), We will licence You the right to use such Outputs in accordance with the provisions of Clause 10.4.

40.4 Where We use AI Systems in the generation of Bespoke Software IP or Data Service Deliverables, then:

40.4.1 to the extent permitted by applicable law and/or any licence in place between Us and a third party AI System provider;

40.4.2 provided that payment has been made by You in full of all sums owed;

40.4.3 subject to Clause 32.20 (as applicable); and

40.4.4 subject to Clause 35.7 (as applicable),

We shall assign to You any intellectual property rights subsisting in any Output produced by the relevant AI System, to the extent such Output forms part of the Bespoke Software IP.

40.5 To the extent that any intellectual property rights in any Output are assigned to You from Us in accordance with Clause 40.4 above, You will grant Us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use any Output for the purpose of providing the Goods, Software and Services to You.

40.6 For clarity, any materials licensed to Us in accordance with Clause 10.5 may be used by Us for the purposes of prompting/inputting into AI Systems. For the avoidance of doubt, You will retain ownership of such materials to the extent that they are incorporated into the relevant prompt/input. However, where a particular input/prompt is created using our own expertise, materials, and/or knowledge, We shall retain all such intellectual property rights in such.

41. Data Security

41.1 In the event that We use Personal Data in the generation of inputs or prompts, We will:

41.1.1 process, and keep confidential, such Personal Data in accordance with the terms of the Contract and our Privacy Policy; and

41.1.2 keep such Personal Data safe and secure, applying the same security measures and safeguards as We would for its own Personal Data.

42. Liability

42.1 Where We provide You with access to one of our AI Systems, for example, a chatbot used as part of our customer service platform, You are solely responsible for ensuring that You use the systems in accordance with:

42.1.1 the AI Policy;

42.1.2 our reasonable instructions; and

42.1.3 any terms of use provided by a third party provider (as applicable).

42.2 With prejudice to the provisions of Clause 8, We will not be liable for any Loss suffered by You which arises as a result of Your failure to comply with Clause 42.1.

43. Suspension of the Services

43.1 Where We become aware of any misuse of a particular AI System, or where We have reasonable grounds to suspect that You may fail, or have failed, to comply with Clause 42.1, We reserve the right to suspend our provision of the Goods, Software and Services immediately and without notice.