



# **Master Services Agreement**

**v19.07.01**

THIS MASTER SERVICES AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF THE SERVICES.

YOU AGREE TO THE TERMS OF THIS MASTER SERVICES AGREEMENT BY ENTERING INTO A CALL-OFF CONTRACT WITH THE SUPPLIER OR BY EXECUTING AN ORDER FORM.

IF YOU ARE ENTERING INTO THIS MASTER SERVICES AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS MASTER SERVICES AGREEMENT AND MAY NOT USE OUR SERVICES.

THIS AGREEMENT GOVERNS THE OVERALL RELATIONSHIP OF THE PARTIES IN RELATION TO THE SERVICES PROVIDED BY THE SUPPLIER TO THE CUSTOMER AND CUSTOMER AFFILIATES UNDER SEPARATE CALL-OFF CONTRACTS, TO BE ENTERED INTO BY THE SUPPLIER AND CUSTOMER OR CUSTOMER AFFILIATE.

**This Master Services Agreement was last updated on 1<sup>st</sup> July 2019.**

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## **RECITAL**

- (A) The Supplier is in the business of providing the Services.
- (B) The Customer wishes to appoint the Supplier to provide some or all of the Available Services to it and or its Affiliates under this Master Services Agreement (“**Agreement**”)
- (C) When a Customer or any of its Affiliates requests Available Services from the Supplier, and the Supplier is able to provide such services, the relevant parties will enter into a separate Call-Off Contract in accordance with this Agreement.
- (D) Each Call-Off Contract incorporates the terms and conditions set out in this Agreement.

## **AGREED TERMS**

### **1. INTERPRETATION**

#### 1.1 Definitions:

The following definitions and rules of interpretation apply in this Agreement;

**Affiliate:** any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

**Available Services:** the services, including without limitation any Deliverables, which the Supplier is willing to provide to the Customer and the Customer Affiliates as set out in Schedule 1.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Call-Off Contract:** an agreement for the provision of Services by the Supplier to the Customer or Customer Affiliate agreed in accordance with Clause 2 (Call-Off Contract).

**Charges:** the charges set out in Part 2 of the Call-Off Contract payable by the Customer or a Customer Affiliate for the supply of the Services by the Supplier.

**control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Customer:** means, in the case of an individual accepting this Agreement and/or the Call-Off Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity which have entered into Order Forms.

**Customer Data:** any information that is provided by or on behalf of the Customer to the Supplier as part of the Customer’s use of the Services, including any information derived from such information.

**Customer Personal Data:** Personal Data comprised in the Customer Data.

**Customer Affiliate:** an Affiliate of the Customer.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts).

**Data Controller:** has the meaning given to that term in the DPA.

**Data Processor:** has the meaning given to that term in the DPA.

**DPA:** the Data Protection Act 2018.

**Foreground IPRs:** all Intellectual Property Rights in the Deliverables, other than Supplier Background IPRs.

**Intellectual Property Rights (“IPRS”):** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** means the Customer’s order for the supply of Available Services.

**Personal Data:** has the meaning given to that term in the DPA, and all applicable changes in law, including any subsequent legislation that may amend or supersede the DPA.

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to the Call-Off Contract.

**Supplier:** means TRICHROMIC LLP incorporated and registered in England and Wales with company number OC317475 whose registered office is at Suite 17 & 18 Riverside House, Lower Southend Road, Wickford, Essex, SS11 8BB.

**Supplier Background IPRs:** all Intellectual Property Rights that are owned by or licensed to the Supplier and which are or have been developed independently of the Agreement or Call-Off Contract in each case either subsisting in the Deliverables or otherwise necessary or desirable to enable the Customer to receive and use the Services.

**Supplier’s System:** the information and communications technology system to be used by the Supplier (or any of its sub-contractors) in performing the Services, including the hardware, the software, the customer-site Equipment and communications links between the hardware and the customer-site equipment and the customer’s operating environment.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/46*) (as amended).

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement or any Call-off Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of

security; or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.11 A reference to **writing** or **written** includes emails.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to this **Agreement** or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.14 References to clauses and schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. CALL-OFF CONTRACT

- 2.1 By entering into a Call-Off Contract or executing an order form, the Supplier agrees to the terms of this Agreement.
- 2.2 A Call-Off Contract shall not enter into force, be legally binding or have any other effect unless it has been signed by the authorised representatives of both parties to it.
- 2.3 Each Call-Off Contract:
  - (a) shall be entered into by the Customer or a Customer Affiliate and the Supplier; and
  - (b) forms a separate contract between its signatories.
- 2.4 Any amendments to this Agreement agreed by the Customer and the Supplier in accordance with

Clause 15 (Variation) shall be deemed to apply to all future Call-Off Contracts entered into after the date of such amendment.

### **3. CONFLICT**

- 3.1 If there is an inconsistency between any of the provisions of the Agreement and the provisions of any Call-Off Contract, the provisions of the Agreement shall prevail.

### **4. COMMENCEMENT AND DURATION**

- 4.1 This Agreement shall be deemed to have commenced on the same date as that the Call-Off Contract is entered between the Supplier and Customer and shall continue until terminated earlier in accordance with its terms.
- 4.2 The Call-Off Contract shall come into force on the date it is executed by its parties.
- 4.3 The Call-Off Contract shall, unless terminated earlier in accordance with its terms, continue from the date it comes into force pursuant to Paragraph 4.2.

### **5. SUPPLY OF SERVICES**

- 5.1 The Supplier shall supply the Services in accordance with the Call-Off Contract and subject to the terms of the Agreement.
- 5.2 The Supplier shall provide the Services from the date the Call-Off Contract comes into force in accordance with Paragraph 5.1.
- 5.3 In supplying the Services, the Supplier shall:
- (a) perform the Services with the level of care, skill and diligence in accordance with practice in the Supplier's industry, profession or trade;
  - (b) co-operate with the Customer in all matters relating to the Services, and comply with all reasonable instructions of the Customer;
  - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that it fulfils its obligations under the Agreement and Call-Off Contract;
  - (d) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Agreement and Call-Off Contract;
  - (e) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in Part 1 of the Call-Off Contract and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;
  - (f) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
  - (g) comply with all applicable laws, statutes, regulations;
  - (h) notify the Customer in writing immediately upon the occurrence of a change of control of the Supplier.

- 5.4 The parties agree that the hardware and/or software assets listed in Part 1 of the Call-Off Contract are those which are supported by the Supplier and may be marked by the Supplier by means of an identification sticker.
- 5.5 In the event that the parties agree on the provision of Services additional to or different from those set out in Part 1 of the Call-Off Contract, the Supplier may identify any change to the relevant hardware and/or software assets by means of adding or removing identification stickers and may re-issue Part 1 of the Call-Off contract to vary the provision of Services.
- 5.6 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services shall be uninterrupted or error-free.
- 5.7 The Supplier reserves the right to:
- (a) modify the Supplier's System, its network, system configurations or routing configuration; or
  - (b) modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network,
- provided that this has no adverse effect on the Supplier's obligations under this agreement and its provision of the Services.
- 5.8 In the event that goods are supplied to the Customer in the course of the provision of Services, the provisions of Schedule 5 shall apply.

## **6. CUSTOMER DATA**

- 6.1 The Supplier shall follow its archiving and security procedures for Customer Data, including those set out in clause 7 (Security) and as described in Schedule 2.
- 6.2 The Supplier shall promptly notify the Customer in writing of any actual or suspected loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or unauthorised access to or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 6.3 Each party undertakes that it shall comply with the DPA and all applicable changes in law, including any subsequent legislation that may amend and/or supersede the DPA, when performing its obligations under this agreement. The parties acknowledge that the European General Data Protection Regulation (GDPR) shall apply during the term of this agreement. The parties agree that they shall enter into such variation of this agreement and execute such additional documentation and make any required changes to the Services as is reasonably required to reflect their obligations under the GDPR and in order for the Supplier to provide the Services in a manner that would allow the Customer to be compliant with the GDPR, based on the Customer's obligations as a Data Controller and the Supplier's obligations as a Data Processor or each party's obligations as a Data Controller, as applicable.
- 6.4 The Customer shall be the Data Controller, and the parties acknowledge that the Supplier will be acting as Data Processor in respect of all data processing activities in relation to Customer Personal Data that the Supplier carries out under this agreement.



6.5 The Supplier undertakes to the Customer that:

- (a) it shall process the Customer Personal Data, including updating, correcting and deleting such Customer Personal Data, only in accordance with this agreement and the written instructions of the Customer and to the extent, and in such a manner, as is reasonably necessary to supply the Services in accordance with this agreement or as is required by any applicable law;
- (b) in respect of Customer Personal Data which is in the possession or under the control of the Supplier, it shall implement appropriate technical and organisational measures to protect this Customer Personal Data against unauthorised or unlawful processing and accidental loss, destruction, damage, alteration or disclosure;
- (c) it shall not publish, disclose or divulge any Customer Personal Data to any third party, nor allow any third party to process Customer Personal Data on the Supplier's behalf, without the prior written consent of the Customer;
- (d) it shall not transfer Customer Personal Data outside the European Economic Area without the prior written consent of the Customer;
- (e) it shall take reasonable steps to ensure the reliability of any employee, agent or sub-contractor who has access to Customer Data, and ensure all employees, agents and sub-contractors undergo training on data protection and information security;
- (f) it shall use reasonable endeavours to assist the Customer at the Customer's cost with any subject access request that the Customer receives relating to Customer Personal Data processed by the Supplier under this agreement;
- (g) it shall use reasonable endeavours to assist the Customer in responding to regulatory requirements.

## **7. SECURITY**

7.1 The Supplier shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to any and all Services, the Supplier's System and related networks or resources and the Customer Data.

7.2 The Supplier shall ensure that the Supplier's System is designed, maintained and upgraded at all times so as to minimise the risk of attack by malicious code, trojan, worm and virus, lock, authorisation key or similar device that impairs or could impair the operation of the Software. The parties agree that if any of the listed are found, each of them shall co-operate with the other to reduce their effect and, particularly if there is loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and restore the Services to their original operating efficiency. The costs of complying with this Clause 7.2 shall be apportioned between the parties on a pro rata basis according to fault.

7.3 The Customer shall promptly inform the Supplier if it suspects or uncovers any breach of security, and shall use all commercially reasonable endeavours to promptly remedy such breach.

## **8. CUSTOMER'S OBLIGATIONS**

8.1 The Customer Party shall provide such information as the Supplier may request and the Customer considers reasonably necessary, in order to carry out the Services in a timely manner;

8.2 If the Supplier's performance of its obligations under the Call-Off Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer

that arise directly or indirectly from such prevention or delay.

8.3 The Customer shall:

- (a) cooperate with the Supplier in all matters relating to the Services;
- (b) permit access to the Customer's premises to the Supplier, its employees, agents, consultants and subcontractors as reasonably required by the Supplier in order to provide the Services;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information and/or materials are accurate and fit for purpose;

## **9. TITLE TO DELIVERABLES AND CUSTOMER MATERIALS**

9.1 Subject to any agreements made in the Call-Off Contract, title to any Deliverables that are goods or in any physical media on which Deliverables are stored shall pass to the Customer on the earlier of their delivery to the Customer or payment of the Charges for them. The Supplier warrants that it has full, clear and unencumbered title to all such items, and that at the date of the transfer of title, it will have full and unrestricted rights to transfer all such items to the Customer.

## **10. CHARGES AND PAYMENT**

- 10.1 Subject to any agreements made in the Call-Off Contract, and in consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this Paragraph 10. The Charges shall be paid in pounds sterling.
- 10.2 Unless otherwise agreed, the Supplier shall invoice the Charges to the Customer at the intervals specified in the Call-Off Contract. Each invoice shall include all supporting information reasonably required by the Customer to verify the accuracy of the invoice.
- 10.3 The Customer shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 10.4 All amounts payable by the Customer are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under this Call-Off Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 10.5 If the Customer fails to make any payment due to the Supplier under this Call-Off Contract by the due date, then, without limiting the Supplier's remedies, the Customer Party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 10.6 All amounts due under this Call-Off Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 10.7 At the absolute discretion of the Supplier, a credit agreement may entered for the benefit of the Customer, as provided in Schedule 4.

## 11. LIMITATION OF LIABILITY

- 11.1 Nothing in this Agreement shall limit or exclude the Supplier's or the Customer's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 11.2 Subject to Clause 10.1:
- (a) neither party to this Agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement;
  - (b) the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement or the Call-Off Contract shall be limited to the total sums paid under the Call-Off Contract; and
  - (c) the Customer's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement or the Call-Off Contract shall be limited to the total sums payable under the Call-Off Contract.

## 12. TERMINATION

- 12.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement or the Call-Off Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
  - (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
  - (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
  - (f) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
  - (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
  - (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in

Clause 12.1(c) to Clause 12.1(j) (inclusive);

- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 12.2 For the purposes of Clause 12.1(a), material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement.
- 12.3 Without affecting any other right or remedy available to it, either party may terminate the Call-Off Contract by giving 3 months written notice to the other party.
- 12.4 If an applicable Call-Off Contract provides for the supply of specific services lasting for a minimum term, then the 3 months written notice period herein shall only be applicable after expiry of the minimum term of 1 year for the supply of said specific services.

### **13. CONSEQUENCES OF TERMINATION**

- 13.1 On termination of this Agreement, each Call-Off Contract then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Call-Off Contract, unless terminated earlier in accordance with the terms of such Call-Off Contract.
- 13.2 The termination of any Call-off Contract shall not affect any other Call-Off Contracts or this Agreement.
- 13.3 On termination of the Agreement or Call-Off Contract, the following clauses shall continue in force: Clause 1 (Interpretation), Clause 11 (Limitation of liability), Clause 13 (Consequences of termination), Clause 14 (Confidentiality), Clause 25 (Governing law), Clause 26 (Jurisdiction).
- 13.4 Termination of this Agreement or Call-Off Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of the agreement which existed at or before the date of termination.
- 13.5 On termination or expiry of the Call-Off Contract, the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to any replacement supplier appointed by it. The Customer shall pay for any such assistance at reasonable rates.

### **14. CONFIDENTIALITY**

- 14.1 Each party undertakes that it shall not at any time during this Agreement or Call-Off Contract, and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or supplier of the other party or any member of the group of companies to which the other party belongs, except as permitted by Clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers,

representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 14; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement or the Call-Off Contract.

## **15. VARIATION**

15.1 No variation of this Agreement or the Call-Off Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **16. WAIVER**

16.1 A waiver of any right or remedy under this Agreement or the Call-Off Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

16.2 A failure or delay by a party to exercise any right or remedy provided under the Agreement or Call-Off 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 Agreement or Call-Off Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **17. RIGHTS AND REMEDIES**

17.1 Except as expressly provided in the Agreement or Call-Off Contract, the rights and remedies provided under the Agreement or Call-Off Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

## **18. SEVERANCE**

18.1 If any provision or part-provision of the Agreement or Call-Off Agreement 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 this Agreement or Call-Off Agreement.

## **19. ENTIRE AGREEMENT**

19.1 The terms of the Agreement and the Call-Off Contract constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party agrees that it shall have no remedies in respect of any statement, representation,

assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or in the Call-Off Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement or Call-Off Contract.

## **20. ASSIGNMENT AND OTHER DEALINGS**

20.1 Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement or Call-Off Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

## **21. NO PARTNERSHIP OR AGENCY**

21.1 Nothing in the Agreement or Call-Off 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.

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

## **22. THIRD PARTY RIGHTS**

22.1 The Agreement or Call-Off Contract do not give rise to any enforcement rights under the Contracts (Rights of Third Parties) Act 1999.

## **23. NOTICES**

23.1 Any notice given to a party under or in connection with the Agreement or Call-Off Agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or by agreed electronic method.

23.2 Any notice shall be deemed to have been received if delivered by hand, on signature of a delivery receipt. If sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting. If sent by agreed electronic method, at 9.00 am on the next Business Day after transmission.

23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **24. DISPUTE RESOLUTION PROCEDURE**

24.1 If a dispute arises out of or in connection with this Agreement or the Call-Off Contract or the performance, validity or enforceability of the Agreement or Call-Off Contract (Dispute) then the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full

particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Customer and the Supplier shall attempt in good faith to resolve the Dispute;

- (b) if the Customer and the Supplier are for any reason unable to resolve the Dispute within 30 days of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the ADR notice.

24.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute.

## **25. GOVERNING LAW**

25.1 This Agreement and the Call-Off Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

## **26. JURISDICTION**

26.1 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 this Agreement or the Call-Off Contract.

## **27. DATA PROTECTION POLICY**

27.1 The parties agree to comply with 'Schedule 2 – Data Protection Policy'.

## **28. TUPE**

28.1 The provisions of "Schedule 3 – TUPE Provisions" shall apply on termination this Agreement or the Call-Off Contract.

## **29. NON-SOLICITATION**

29.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Call-Off Contract to the expiry of 18 months after the completion of the Services or termination of the Call-Off Contract, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

29.2 Any consent given by the Supplier in accordance with Clause 29.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer Party to that employee, consultant or subcontractor.

## **30. INTELLECTUAL PROPERTY**

- 30.1 The Supplier and its licensors shall retain ownership of all Supplier Background IPRs. The Customer shall own all Foreground IPRs.
- 30.2 The Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free to copy and modify the Supplier Background IPRs for the purpose of receiving and using the Services and the Deliverables.
- 30.3 The Supplier warrants that the receipt, use and onward supply of the Services by the Customer and its licensees and sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 30.4 The Supplier shall not be in breach of the warranty at Clause 30.3 to the extent the infringement arises from:
- (a) any modification of the Deliverables, Supplier Background IPRs, Foreground IPRs or Services, other than by or on behalf of the Supplier; or
  - (b) compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.

## **31. EXCLUSIVITY**

- 31.1 The Customer agrees it has engaged the Supplier to provide the Services under the Call-Off Contract on a sole and exclusive basis. For the duration of the Call-Off Contract, the Customer agrees that it will not procure similar services from any supplier other than the Supplier for the same purpose as the Services provided under the Call-Off Contract.
- 31.2 In the event that the Customer breaches the above 31.1, the Supplier shall have the right to terminate the Call-Off Contract in accordance with Clause 12.

## **32. FORCE MAJEURE**

- 32.1 Neither party shall be in breach of the Agreement or Call-Off Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement or Call-off Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Agreement or Call-off Contract by giving 14 days' written notice to the affected party.





# **SCHEDULE 1: AVAILABLE SERVICES**

## **1. MANAGED SERVICES**

- 1.1 Trichromic provides proactive managed IT services for network equipment, on-premise servers, desktop computers, laptops, IP telephone systems and printers with end user help and support.
- 1.2 Trichromic operates its own data centre servers from which we provide private cloud computing platforms, private file sharing services and off-site backup and business continuity services. We also supply managed hosted e-mail services, e-mail filtering and web access security solutions.
- 1.3 Managed services are delivered under our **Trichromic Sapphire™** and **Trichromic Topaz™** brands.
- 1.4 **Trichromic Sapphire MANAGED™** provides management of on-premise IT systems. There are 4 service-level options within the Trichromic Sapphire MANAGED™ family:
  - (a) **Trichromic Sapphire MANAGED M1™**  
software management of on-premise or Trichromic Sapphire CloudDESKTOP™ servers only
  - (b) **Trichromic Sapphire MANAGED M2™**  
software management of on-premise servers or Trichromic Sapphire CloudDESKTOP™ plus desktop/laptop computers with their peripheral devices, such as printers and scanners
  - (c) **Trichromic Sapphire MANAGED M3™**  
software management of entire site network of routers, firewalls, wireless access points, Ethernet switches, IP phone systems, servers, desktop computers and peripheral devices
  - (d) **Trichromic Sapphire MANAGED M4™**  
software management of entire network, servers, desktop computers and peripheral devices plus a routine maintenance and support visit on a regular schedule
- 1.5 Hardware or software assets may be excluded from a managed service agreement if they are deemed to be unmaintainable due to their age, lack of manufacturer support or poor physical condition.
- 1.6 Hardware or software assets that are not covered by the client's chosen service-level may be supported on an unmanaged basis and any work carried out on them will be charged at the applicable AMC overage rate.
- 1.7 Clients with Trichromic Sapphire MANAGED™ service agreements benefit from a discounted hourly rate on overage fees for work that is out-of-scope of their chosen service-level. Software management is provided for installed production assets only. The installation of new assets, redeployment or replacement (work that is classified as 'Adds, Moves and Changes' or 'AMCs') will incur an AMC overage fee at the agreed rate.
- 1.8 Trichromic Sapphire MANAGED™ also gives clients the benefit of a fixed AMC overage fee for the installation and setup of new desktop PC and printer assets.
- 1.9 Project work, which is out-of-scope of maintaining managed assets, will be charged as an overage at a fee rate agreed upon after acceptance of a quotation. Examples of project work are office relocations, bespoke software development, new systems implementation and consulting work.

## 2. UNMANAGED SERVICES

- 2.1 Trichromic also offers unmanaged IT support services under our **Trichromic Sapphire UNMANAGED™** brand.
- 2.2 Unmanaged services have a reactive or 'break/fix' service level. Help desk support, on-site troubleshooting, installation and support work is invoiced as hourly rated fees at the end of the month incurred.
- 2.3 Clients with Trichromic Sapphire UNMANAGED™ support agreements may add individual managed services from the available 'bolt-on' services in our portfolio. The relevant service fees will be invoiced monthly in advance

## 3. CLOUD SERVICES

- 3.1 Trichromic Sapphire CloudAERO™ is a fully-managed private file-sharing service employing AeroFS but is a closed system that is only accessible to the client and Trichromic. We manage the file backups, restores and any file version conflicts that may arise.
- 3.2 Trichromic Sapphire CloudDESKTOP™ is a fully-managed private cloud platform, accessed via Microsoft Remote Desktop Services, that is tailored to clients' specific needs and includes all operating system and software application updates with end user help desk support. We offer options for adding Microsoft SQL Server and Microsoft Office products and can also install and maintain third-party vendor products such as Sage 50 Accounts, IRIS Accountancy Suite and other line-of-business applications.
- 3.3 Trichromic Sapphire CloudEXCHANGE™ is a hosted Microsoft Exchange service with options for filtering e-mail 'spam' and for archiving of messages for up to 10 years. It includes configuration management and end user support plus ActiveSync for mobile users.
- 3.4 Trichromic Topaz™ is a family of services providing off-site backup to our data centre servers from on-premise servers and desktop PCs. Backup set configuration, job monitoring and file restores are included. Business continuity and disaster recovery solutions are also an important part of our Trichromic Topaz services and we can co-locate client's own backup servers within our data centre racks.
- 3.5 Trichromic is a Microsoft Partner and Cloud Service Provider ('CSP'). We offer managed Microsoft Office 365 and Microsoft Azure services
- 3.6 The cloud services described above are just a few examples. Please refer to our services portfolio for a full list or speak to our Sales staff for more details.

## 4. SERVICES PORTFOLIO

4.1 The following list is the current services in our portfolio catalogue, as of 01/07/2019

| CODE    | SERVICE NAME   | DESCRIPTION   |
|---------|--|---|
| 300-101 | MANAGED server asset   | Server management inc. local image backup                   |
| 300-102 | MANAGED desktop assets   | Desktop/laptop management, inc. printers & scanners         |
| 300-103 | MANAGED Thin client assets                                     | Thin-client device management                               |
| 300-104 | MANAGED Network assets   | Entire local network devices management                     |
| 300-111 | MANAGED PABX assets  | IP phone system management                                  |
| 300-112 | MANAGED handset assets   | IP phone handset management                                 |
| 300-113 | MANAGED ancillary assets                                       | NAS and storage devices management                          |
| 300-114 | MANAGED SBC for remote phones                                  | Session border controller management                        |
| 300-121 | Inclusive AMCs for MANAGED (/hour)                             | On-site AMC overage time included                           |
| 300-122 | Inclusive on-site time for MANAGED M4                          | Routine maintenance and support visits scheduled            |
| 300-301 | Monthly fee for UNMANAGED support                              | Nominal retainer fee for support agents                     |
| 300-302 | Monthly fee for UNMANAGED LIGHT support                        | Low-usage discretionary retainer rate                       |
| 300-401 | Bolt-on Sapphire FOUNDATION /server                            | Health monitoring for servers                               |
| 300-402 | Bolt-on Sapphire FOUNDATION /workstation                       | Health monitoring for desktops                              |
| 301-001 | Bolt-on Sapphire CloudAERO (/server, inc. 1st user)            | Private file-sharing system inc first user, up to 29 users  |
| 301-002 | Bolt-on Sapphire CloudAERO (/additional user)                  | Private file-sharing system additional users                |
| 301-003 | Bolt-on Sapphire CloudAERO backup (/server)                    | Private file-sharing additional backup and file versioning  |
| 301-004 | Bolt-on Sapphire CloudAERO Business Edn. (/user)               | Private file-sharing system for 30+ users                   |
| 301-005 | Bolt-on Sapphire CloudAERO Team Edn. (/platform, inc 5 users)  | Private file-sharing system inc 5 users, up to 29 users max |
| 301-006 | Bolt-on Sapphire CloudAERO Team Edn. (/additional user)        | Private file-sharing system, up to 29 users                 |
| 302-001 | Bolt-on Sapphire CloudCONNECT mailbox                          | Low cost hosted e-mail with mobile access                   |
| 304-001 | Bolt-on Sapphire CloudDESKTOP platform                         | Private cloud platform, per client                          |
| 304-002 | Bolt-on Sapphire CloudDESKTOP user                             | Private cloud platform, per user                            |
| 304-003 | Bolt-on Sapphire CloudDESKTOP sgl usr platform                 | Private cloud platform, per customer (single user)          |
| 304-004 | Bolt-on Sapphire CloudDESKTOP 3rd-party vendor admin user      | Private cloud platform, per 3rd-party vendor admin          |
| 304-005 | Bolt-on Sapphire CloudDESKTOP VPN option                       | VPN tunnel from client's site to data centre                |
| 304-006 | Bolt-on Sapphire CloudDESKTOP Office Std                       | Microsoft Office Standard option for CloudDESKTOP           |
| 304-007 | Bolt-on Sapphire CloudDESKTOP Office Pro                       | Microsoft Office Professional option for CloudDESKTOP       |
| 304-008 | Bolt-on Sapphire CloudDESKTOP SQL Server (/user)               | Microsoft SQL Server option for CloudDESKTOP, per user      |
| 304-009 | Bolt-on Sapphire CloudDESKTOP SQL Server (/2-core)             | Microsoft SQL Server option for CloudDESKTOP, per 2-core    |
| 304-010 | Bolt-on Sapphire CloudDESKTOP XP/Mac Printing                  | Printer redirection option for CloudDESKTOP, per platform   |
| 304-011 | Bolt-on Sapphire CloudDESKTOP Advanced Search                  | Advanced search option for CloudDESKTOP users               |
| 304-012 | Bolt-on Sapphire CloudDESKTOP 3rd-party soft. maint. (/asset)  | 3rd-party software asset maintenance for CloudDESKTOP       |
| 304-013 | Bolt-on Sapphire CloudDESKTOP Email filing for Outlook (/user) | Save emails to CloudDESKTOP filing system with eFiler       |
| 304-014 | Bolt-on Sapphire CloudDESKTOP 2FA with OTP (/user)             | CloudDESKTOP option for two-factor login with OTP           |
| 304-015 | Bolt-on Sapphire CloudDESKTOP 2FA with Smartcard (/user)       | CloudDESKTOP option for two-factor login with smartcard     |
| 304-021 | Bolt-on Sapphire CloudDESKTOP-CA platform                      | CloudDESKTOP platform on customer-owned server assets       |
| 304-022 | Bolt-on Sapphire CloudDESKTOP-CA user                          | CloudDESKTOP user on customer-owned server assets           |
| 305-001 | Bolt-on Sapphire CloudEXCHANGE small (10GB) mailbox            | Microsoft Exchange 2016 user mailbox up to 10GB             |
| 305-002 | Bolt-on Sapphire CloudEXCHANGE std. mailbox                    | Microsoft Exchange 2016 user mailbox up to 50GB             |
| 305-003 | Bolt-on Sapphire CloudEXCHANGE advanced filter                 | E-mail content filtering and ant-ispam control              |
| 305-004 | Bolt-on Sapphire CloudEXCHANGE 1 yr archive                    | Archive all emails in and out for 1 year                    |

|         |   |   |
|---------|---|---|
| 305-005 | Bolt-on Sapphire CloudEXCHANGE 10 yr archive                  | Archive all emails in and out for 10 years                |
| 305-006 | Bolt-on Sapphire CloudEXCHANGE Online mailbox                 | Managed Microsoft Exchange Online user mailbox            |
| 306-001 | Bolt-on Sapphire CloudFILTER (/domain)                        | E-mail spam and virus filtering for entire domain         |
| 307-001 | Bolt-on Sapphire SecureMAIL (/customer, inc. first 3 users)   | Secure e-mail per client, inc first 3 users               |
| 307-002 | Bolt-on Sapphire SecureMAIL (/additional User)                | Secure e-mail per client, additional users                |
| 308-001 | Bolt-on Sapphire WEB hosting (/domain)                        | Web hosting on Microsoft IIS or Parallels Plesk server    |
| 308-002 | Bolt-on Sapphire Web archiving (/domain)                      | Archive your website's historical content routinely       |
| 308-003 | Bolt-on Sapphire DOMAINS hosting (/domain)                    | Domain Name Service and domain registration/renewal       |
| 308-011 | Bolt-on Sapphire WEB dedicated IP address (/domain)           | Web hosting on Microsoft IIS or Parallels Plesk server    |
| 309-001 | Bolt-on Sapphire PROTECT A/V (/PC)                            | Anti-virus for servers and desktops with incident support |
| 309-002 | Bolt-on Sapphire PROTECT A/S (/mailbox)                       | E-mail spam and virus filtering per user mailbox          |
| 309-003 | Bolt-on Sapphire PROTECT C/F (/user)                          | Web content filtering per user                            |
| 309-011 | Bolt-on Sapphire PROTECT E/P (/device)                        | Endpoint protection for desktops with incident support    |
| 310-001 | Bolt-on Sapphire NetPROTECT (/user)                           | Web access protection and policy management               |
| 311-001 | Bolt-on Sapphire CMSD (Taskfire /client)                      | Co-managed support desk per client                        |
| 311-002 | Bolt-on Sapphire CMSD (Taskfire /user)                        | Co-managed support desk per user                          |
| 312-001 | Bolt-on Sapphire DCL (/1U server/NAS)                         | Data centre co-location per 1U server or NAS              |
| 312-002 | Bolt-on Sapphire DCL (/2U server)                             | Data centre co-location per 2U server                     |
| 314-001 | Bolt-on Sapphire Secure Data VAULT (/user)                    | Managed database for secure information and passwords     |
| 315-001 | Bolt-on Sapphire CloudVOICE platform                          | Managed hosted 3CX 8SC Std PABX system                    |
| 315-002 | Bolt-on Sapphire CloudVOICE handset asset                     | Managed phone handset asset for CloudVOICE                |
| 365-001 | Bolt-on Microsoft Office 365 Business lic. (/user)            | Microsoft Office 365 Business licence                     |
| 365-002 | Bolt-on Microsoft Office 365 Bus. Prem. lic. (/user)          | Microsoft Office 365 Business Premium licence             |
| 365-003 | Bolt-on Microsoft Office 365 ProPlus lic. (/user)             | Microsoft Office 365 ProPlus licence                      |
| 365-004 | Bolt-on Microsoft Office 365 Project Pro lic. (/user)         | Project Pro for Office 365 licence                        |
| 365-005 | Bolt-on Microsoft Exchange Online Plan 1 lic. (/user)         | Microsoft Exchange Online licence                         |
| 365-012 | Bolt-on Microsoft Office 365 Visio Online Plan 2 lic. (/user) | Visio Online Plan 2 for Office 365 licence                |
| 365-023 | Bolt-on Microsoft Office 365 Enterprise E3 (/user)            | Microsoft Office 365 Enterprise E3 licence                |
| 366-001 | Bolt-on Server-side Signatures for Office 365 (/user)         | Apply standard signatures from all user devices           |
| 313-001 | Bolt-on Topaz Pro. storage for servers (/GB)                  | Off-site backup of server per GB of storage               |
| 313-002 | Bolt-on Topaz Std. storage for desktops (/GB)                 | Off-site backup of desktop PC per GB of storage           |
| 313-003 | Bolt-on Topaz mailboxes (/mailbox)                            | Off-site backup of Microsoft Exchange mailbox             |
| 313-004 | Bolt-on Topaz UDP, desktop protection (/PC)                   | Unmanaged desktop disk volume imaging                     |
| 313-005 | Bolt-on Topaz USP, server protection (/server)                | Unmanaged server disk volume imaging                      |
| 313-006 | Bolt-on Topaz DR1 (/server)                                   | Server disk volume imaging to local storage               |
| 313-007 | Bolt-on Topaz DR2 (/server)                                   | Server disk volume imaging to data centre storage         |
| 313-008 | Bolt-on Topaz DR1 to DR2 upgrade (/server)                    | Server disk volume imaging to data centre storage         |
| 313-009 | Bolt-on Topaz OIS, off-site image backup (/server)            | Off-site disk image backup for servers                    |
| 313-016 | Bolt-on Topaz DR1 (/additional server)                        | Server disk volume imaging to local storage               |
| 313-017 | Bolt-on Topaz DR2 (/additional server)                        | Server disk volume imaging to data centre storage         |



## **SCHEDULE 2: DATA PROTECTION POLICY**

### **1. POLICY STATEMENT**

- 1.1 Everyone has rights with regard to the way in which their personal data is handled. During the course of our activities we will collect, store and process personal data about our customers, suppliers and other third parties, and we recognise that the correct and lawful treatment of this data will maintain confidence in the organisation and will provide for successful business operations.
- 1.2 Data users are obliged to comply with this policy when processing personal data on our behalf. Any breach of this policy may result in disciplinary action.

### **2. ABOUT THIS POLICY**

- 2.1 The types of personal data that the Supplier ("We") may be required to handle include information about current, past and prospective customers and others that we communicate with. The personal data, which may be held on paper or on a computer or other media, is subject to certain legal safeguards specified in the UK Data Protection Act 2018 (the Act), the EU GDPR and other regulations.
- 2.2 This policy and any other documents referred to in it sets out the basis on which we will process any personal data we collect from data subjects, or that is provided to us by data subjects or other sources.
- 2.3 This policy does not form part of any employee's contract of employment and may be amended at any time.

### **3. DEFINITION OF DATA PROTECTION TERMS**

- 3.1 Data is information which is stored electronically, on a computer, or in certain paper-based filing systems.
- 3.2 Data subjects for the purpose of this policy include all living individuals about whom we hold personal data. A data subject need not be a UK national or resident. All data subjects have legal rights in relation to their personal information.
- 3.3 Personal data means data relating to a living individual who can be identified from that data (or from that data and other information in our possession). Personal data can be factual (for example, a name, address or date of birth) or it can be an opinion about that person, their actions and behaviour.
- 3.4 Data controllers are the people who or organisations which determine the purposes for which, and the manner in which, any personal data is processed. They are responsible for establishing practices and policies in line with the Act. We are the data controller of all personal data used in our business for our own commercial purposes.
- 3.5 Data users are those of our employees whose work involves processing personal data. Data users must protect the data they handle in accordance with this data protection policy and any applicable data security procedures at all times.

- 3.6 Data processors include any person or organisation that is not a data user that processes personal data on our behalf and on our instructions.
- 3.7 Processing is any activity that involves use of the data. It includes obtaining, recording or holding the data, or carrying out any operation or set of operations on the data including organising, amending, retrieving, using, disclosing, erasing or destroying it. Processing also includes transferring personal data to third parties.
- 3.8 Sensitive personal data includes information about a person's racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health or condition or sexual life, or about the commission of, or proceedings for, any offence committed or alleged to have been committed by that person, the disposal of such proceedings or the sentence of any court in such proceedings. Sensitive personal data can only be processed under strict conditions, including a condition requiring the express permission of the person concerned.

## **4. DATA PROTECTION PRINCIPLES**

- 4.1 Anyone processing personal data must comply with the eight enforceable principles of good practice. These provide that personal data must be:
- (a) Processed fairly and lawfully.
  - (b) Processed for limited purposes and in an appropriate way.
  - (c) Adequate, relevant and not excessive for the purpose.
  - (d) Accurate.
  - (e) Not kept longer than necessary for the purpose.
  - (f) Processed in line with data subjects' rights.
  - (g) Secure.
  - (h) Not transferred to people or organisations situated in countries without adequate protection.

## **5. FAIR AND LAWFUL PROCESSING**

- 5.1 The Act is not intended to prevent the processing of personal data, but to ensure that it is done fairly and without adversely affecting the rights of the data subject.
- 5.2 For personal data to be processed lawfully, they must be processed on the basis of one of the legal grounds set out in the Act. These include, among other things, the data subject's consent to the processing, or that the processing is necessary for the performance of a contract with the data subject, for the compliance with a legal obligation to which the data controller is subject, or for the legitimate interest of the data controller or the party to whom the data is disclosed. When sensitive personal data is being processed, additional conditions must be met. When processing personal data as data controllers in the course of our business, we will ensure that those requirements are met.

## **6. PROCESSING FOR LIMITED PURPOSES**

- 6.1 In the course of our business, we may collect and process personal data. This may include data we receive directly from a data subject (for example, by completing forms or by corresponding with us by mail, phone, email or otherwise) and data we receive from other sources (including, for example, business partners, sub-contractors in technical, payment and delivery services, credit reference

agencies and others).

- 6.2 We will only process personal data for the specific purposes permitted by the Act. We will notify those purposes to the data subject when we first collect the data or as soon as possible thereafter.

## **7. NOTIFYING DATA SUBJECTS**

- 7.1 If we collect personal data directly from data subjects, we will inform them about:
- (a) The purpose or purposes for which we intend to process that personal data.
  - (b) The types of third parties, if any, with which we will share or to which we will disclose that personal data.
  - (c) The means, if any, with which data subjects can limit our use and disclosure of their personal data.
- 7.2 If we receive personal data about a data subject from other sources, we will provide the data subject with this information as soon as possible thereafter.

## **8. ADEQUATE, RELEVANT AND NON-EXCESSIVE PROCESSING**

- 8.1 We will only collect personal data to the extent that it is required for the specific purpose notified to the data subject.

## **9. ACCURATE DATA**

- 9.1 We will ensure that personal data we hold is accurate and kept up to date. We will check the accuracy of any personal data at the point of collection and at regular intervals afterwards. We will take all reasonable steps to destroy or amend inaccurate or out-of-date data.

## **10. TIMELY PROCESSING**

- 10.1 We will not keep personal data longer than is necessary for the purpose or purposes for which they were collected. We will take all reasonable steps to destroy, or erase from our systems, all data which is no longer required.

## **11. PROCESSING IN LINE WITH DATA SUBJECTS' RIGHTS**

- 11.1 We will process all personal data in line with data subjects' rights, in particular their right to:
- (a) Request access to any data held about them by a data controller (see also Clause 15).
  - (b) Prevent the processing of their data for direct-marketing purposes.
  - (c) Ask to have inaccurate data amended (see also Clause 9).
  - (d) Prevent processing that is likely to cause damage or distress to themselves or anyone else.

## 12. WARRANTIES

- 12.1 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 12.2 We warrant that, having regard to the state of technological development and the cost of implementing any measures, it will:
- (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
    - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - (ii) the nature of the data to be protected.
  - (b) take reasonable steps to ensure compliance with those measures.
- 12.3 We will put in place procedures and technologies to maintain the security of all personal data from the point of collection to the point of destruction. Personal data will only be transferred to a data processor if he agrees to comply with those procedures and policies, or if he puts in place adequate measures himself.
- 12.4 We will maintain data security by protecting the confidentiality, integrity and availability of the personal data, defined as follows:
- (a) **Confidentiality** means that only people who are authorised to use the data can access it.
  - (b) **Integrity** means that personal data should be accurate and suitable for the purpose for which it is processed.
  - (c) **Availability** means that authorised users should be able to access the data if they need it for authorised purposes.
- 12.5 We will maintain security procedures which include:
- (a) Entry controls. Any stranger seen in entry-controlled areas should be reported.
  - (b) Secure lockable desks and cupboards. Desks and cupboards should be kept locked if they hold confidential information of any kind.
  - (c) Methods of disposal. Paper documents should be shredded. Digital storage devices should be physically destroyed when they are no longer required.
  - (d) Equipment. Data users must ensure that individual monitors do not show confidential information to passers-by and that they log off from their PC when it is left unattended.

## 13. TRANSFERRING PERSONAL DATA TO A COUNTRY OUTSIDE THE EEA

- 13.1 We may transfer any personal data we hold to a country outside the European Economic Area ("EEA"), provided that one of the following conditions applies:
- (a) The country to which the personal data are transferred ensures an adequate level of protection for the data subjects' rights and freedoms.
  - (b) The data subject has given his consent.
  - (c) The transfer is necessary for one of the reasons set out in the Act, including the performance of a contract between us and the data subject, or to protect the vital interests of the data subject.



- (d) The transfer is legally required on important public interest grounds or for the establishment, exercise or defence of legal claims.
- (e) The transfer is authorised by the relevant data protection authority where we have adduced adequate safeguards with respect to the protection of the data subjects' privacy, their fundamental rights and freedoms, and the exercise of their rights.

13.2 Subject to the requirements in Clause 13.1 above, personal data we hold may also be processed by staff operating outside the EEA who work for us or for one of our suppliers. That staff maybe engaged in, among other things, the fulfilment of contracts with the data subject, the processing of payment details and the provision of support services.

## **14. DISCLOSURE AND SHARING OF PERSONAL INFORMATION**

14.1 We may share personal data we hold with any member of our group, which means our subsidiaries, our ultimate holding company and its subsidiaries, as defined in section 1159 of the UK Companies Act 2006.

14.2 We may also disclose personal data we hold to third parties:

- (a) In the event that we sell or buy any business or assets, in which case we may disclose personal data we hold to the prospective seller or buyer of such business or assets.
- (b) If we or substantially all of our assets are acquired by a third party, in which case personal data we hold will be one of the transferred assets.

14.3 If we are under a duty to disclose or share a data subject's personal data in order to comply with any legal obligation, or in order to enforce or apply any contract with the data subject or other agreements; or to protect our rights, property, or safety of our employees, customers, or others. This includes exchanging information with other companies and organisations for the purposes of fraud protection and credit risk reduction.



## **SCHEDULE 3: TUPE PROVISIONS**

### **1. TUPE on exit**

#### 1.1 Personnel:

In this schedule the following definitions apply:

**"Returning Employees"** means those persons listed in a schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the Supplier wholly and/or mainly in the Services immediately before the Subsequent Transfer Date;

**"Subsequent Transfer Date"** means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services between the Supplier and Customer and/or a New Supplier (as the case may be); and

- 1.2 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier for any reason and where all or part of the Services continue to be provided by the Customer and/or a New Supplier, there may be a relevant transfer of the Returning Employees to the Customer and/or the New Supplier for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to the Customer and/or the New Supplier in accordance with TUPE with effect from the Subsequent Transfer Date.
- 1.3 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Customer and/or the New Supplier.
- 1.4 The Supplier shall not later than twenty (20) Business Days prior to the expiry of a relevant Call-Off Contract, or of notice being given of termination of the relevant Call-Off Contract, to the extent lawfully permitted provide the Customer with the following details:
- (a) a list of those personnel engaged in the Services (Potential Returning Employees);
  - (b) job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;
  - (c) terms and conditions of employment of the Potential Returning Employees, including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996;
  - (d) any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;
  - (e) any claims, current or which the Supplier has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;
  - (f) all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees; and
  - (g) information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to TUPE.
- 1.5 The Supplier shall provide updates of the details listed above at regular intervals to be specified by the Customer.
- 1.6 The Supplier shall indemnify the Customer (both for itself and a New Supplier) against all costs,

claims, liabilities and expenses (including reasonable legal expenses) incurred by the Customer and/or a New Supplier in connection with or as a result of:

- (a) any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Supplier on or before the Subsequent Transfer Date;
- (b) any failure by the Supplier to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the Customer and/or New Supplier to comply with its or their duties under regulation 13 of TUPE; and
- (c) a claim by any person who transfers or alleges that they have transferred to the Customer or the New Supplier but whose name is not included in the list of Returning Employees.

- 1.7 If TUPE applies to transfer the employment of any person employed by the Supplier to the Customer or any New Supplier then if the Customer or such New Supplier shall serve a notice terminating the employment of such person within six (6) months after the date of such transfer, the Supplier shall indemnify the Customer (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Customer is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.



## **SCHEDULE 4 – CREDIT AGREEMENTS**

### **1. CUSTOMER TO APPLY FOR CREDIT**

- 1.1 The Customer agrees that invoices rendered by the Supplier shall be payable forthwith unless a Credit Agreement is entered into.
- 1.2 The Credit Agreement is granted at the sole discretion of the Supplier.
- 1.3 Once granted, the Credit Agreement may be withdrawn or varied by the Supplier at any time on 30 days' notice.
- 1.4 The Customer agrees to supply such documentation as the Supplier may reasonably require pursuant to the grant or continuation of a Credit Agreement, such documentation to be held by the Supplier for the purposes of the Credit Agreement.
- 1.5 The Customer agrees that the Supplier may carry out such checks as in its sole discretion it deems necessary in order to determine whether or not to grant a Credit Agreement.

### **2. CREDIT ACCOUNT AND TERMS**

- 2.1 All items invoiced to the Customer shall be added to the account created as a result of any Credit Agreement.
- 2.2 The terms of the Credit Agreement shall include provision as to the Due Date for payment of any invoice, which will ordinarily be 30 days from the date of the invoice but may be greater or less in the sole and absolute discretion of the Supplier.
- 2.3 The terms of the Credit Agreement shall also include provision for a maximum amount of credit, which shall be at the sole and absolute discretion of the Supplier.
- 2.4 If on any occasion the maximum amount of credit is exceeded for any reason, the Supplier reserves the right, without limitation or exclusion of any other remedy under this Agreement or otherwise, immediately to suspend the provision of Services, including interruption to the delivery of goods and/or any technical support, until such time as the account is brought back below the maximum by means of payment by the Customer.
- 2.5 Variations to the amount of maximum credit and/or the due date may be requested by the Customer at any time but will be granted or refused in the sole and absolute discretion of the Supplier.
- 2.6 The Customer will be supplied with sufficient information in the form of statements of accounts and invoices in order to keep its account up to date. However the failure to provide such documents or their unavailability or loss shall not be taken to release the Customer from its obligations under this Agreement in relation to Credit Agreements or otherwise.

### **3. CUSTOMER DEFAULT**

- 3.1 In the event of any Customer Default, the Supplier shall have the right forthwith and without notice to determine any existing Credit Agreement or vary the maximum amount of credit, including reducing credit to zero.
- 3.2 For the avoidance of doubt, in the event of any Customer default, the Supplier shall be entitled to suspend the performance of Services, including the delivery of goods and/or any technical support, until such time as all outstanding unpaid invoices have been paid. The exercise of the foregoing right shall be without prejudice to any other rights or remedies that the Supplier may have under this Agreement or otherwise.

### **4. DISPUTES**

- 4.1 If any query or dispute arises as to the content, amount or terms of any invoice, the Customer agrees that it will notify the Supplier of the same before the due date.
- 4.2 If the relevant query or dispute is resolved by agreement of the parties, the Supplier will issue an amended invoice or credit note.
- 4.3 If the Customer fails to notify the Supplier of the dispute or query before the due date, the Customer agrees that it will pay the invoice by the due date but will subsequently be entitled, if the dispute or query is resolved by agreement between the parties, to receive a credit note and to have their account adjusted in accordance with the same.



## **SCHEDULE 5: GENERAL TERMS & CONDITIONS REGARDING PROVISION OF GOODS**

### **1. GOODS**

- 1.1 In the event that goods are supplied to the Customer in the course of the provision of Services:
- (a) the risk of damage to the goods shall pass to the Customer on delivery to the Customer's premises;
  - (b) ownership of the goods shall not pass to the Customer until the Supplier has received payment in full for the goods and any other goods that the Supplier has supplied to the Customer;
  - (c) for the avoidance of doubt, the existence of a Credit Agreement between the Supplier and the Customer shall not be deemed to constitute payment for goods and shall not operate to transfer ownership of goods to the Customer;
  - (d) until such time as ownership of the goods has passed to the Customer the goods will be deemed to be materials belonging to the Supplier and the Customer shall be deemed to be a bailee of the materials.

### **2. PRICE**

- 2.1 The Supplier reserves the right to increase the cost of goods at any time in advance of an Order being placed and accepted by the Supplier, or, in relation to Services supplied in the course of this Agreement, by giving to the Customer 30 days' notice in writing of the change.

### **3. PAYMENT**

- 3.1 Without limitation of any of the Supplier's other rights or remedies, and subject to the existence of a Credit Agreement, the Supplier shall have the right to charge interest on any amount invoiced but remaining unpaid after the due date at the rate of 8 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the due date until the date of payment of the overdue amount.
- 3.2 The Customer shall pay all amounts due in full without any deduction or withholding and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to withhold any such amount in whole or in part.

### **4. RETURNS**

- 4.1 Goods may be returned to stock in special circumstances only.
- 4.2 Such goods will only be acceptable for return if (i) approved by the Supplier and covered by an official returns number issued by the Supplier and (ii) the intention to return is notified within 7 (seven) days of delivery.
- 4.3 Goods not in their original packing or damaged will not be accepted.

- 4.4 A restocking charge of 20% of the value of the goods will be payable.
- 4.5 The Supplier's obligation for the defective goods shall be limited to the repair or replacement (at its option) pursuant to provisions of clause 7 below.

## **5. WARRANTY**

- 5.1 Unless otherwise agreed in writing, goods purchased hereunder are warranted on a return to depot basis against defects in workmanship and materials under normal and proper use and conditions in its unmodified condition for a period of 90 (ninety) days from date of delivery or within the manufacturer's warranty period.
- 5.2 As a condition of this Warranty the Customer must:
- (a) ship the goods to the Supplier's depot transportation prepaid,
  - (b) include with the returned goods a written description of the claimed defects, and
  - (c) notify the Supplier within 14 days of the fault complained of.
- 5.3 If the Supplier determines that the goods returned to it for warranty correction is not defective as herein defined, the Customer shall pay the Supplier all costs of handling, diagnosis and transportation.
- 5.4 The Supplier's sole responsibility under the above warranty shall be (at its option) either to repair or to replace the goods and/or components which fail during the Warranty period due to defects in workmanship and material, provided the Customer has promptly reported the same to the Supplier in writing and that the Supplier has upon inspection, found such goods and/or components to be defective.
- 5.5 All replaced goods shall become the Supplier's property.
- 5.6 This warranty does not apply to goods or components which have been altered, treated, processed or worked upon while in the Customer's hands other than in the ordinary course of installation in accordance with the Supplier's written or verbal instructions and operated in accordance with the recommendations of the Supplier or manufacturer.
- 5.7 Save as aforesaid all express or implied conditions or Warranties statutory or otherwise as to the state, quality, fitness, suitability or performance of the goods and components are expressly excluded.

## **6. PATENTS**

- 6.1 The Customer agrees to notify the Supplier promptly in writing of any action (and all prior claims related) brought against the Customer claiming that the Customer use or resale of the Suppliers products infringes a patent, copyright or licence.
- 6.2 In the event that an injunction shall be obtained against the Customer's use of the product by reason of such infringement the Supplier will at its option and at its expense either procure replace or modify the same so that it becomes non-infringing if the above is not reasonably feasible grant the Customer a credit for the normal depreciated value of the product.

- 6.3 The Supplier will not be liable if the alleged infringement is based upon:
- (a) the use of the goods in combination with goods not sold by the Supplier and,
  - (b) the furnishing to the customer of any information, data, service or application assistance.
- 6.4 The foregoing states the entire liability of the Supplier for infringement by the goods purchased.
- 6.5 The Supplier retains all Intellectual Property Rights in connection with goods supplied under the Agreement.

## **7. LOSS OR DAMAGE IN TRANSIT**

- 7.1 The Supplier will entertain no claim for loss or damage to the goods delivered unless notification of the nature and extent of such a claim is received by the Supplier within 10 (ten) days.
- 7.2 The liability of the Supplier shall in no circumstances exceed the invoiced value of the goods lost or damaged.

## **8. CUSTOMER INSOLVENCY**

- 8.1 In the event that any distress or execution shall be levied upon the Customer or his property or assets, or if the Customer shall compound with his creditors or commit any act of bankruptcy presented or made against him, or if the Customer shall be a limited company or limited liability partnership any resolution or petition to wind up such company's business shall be made, passed or presented otherwise than for reconstruction or amalgamation or if a receiver of such company's undertaking property or assets or any part thereof shall be appointed, the Supplier shall have the right forthwith:
- (a) to terminate in accordance with clause 10;
  - (b) to recover at the Customer's expense and without demand all goods which remain Supplier materials.

## **9. INDEMNITY**

- 9.1 The Supplier shall indemnify the Customer against any claims arising out of the death or physical injury of persons caused by the defects in any of the goods supplied by the Supplier.
- 9.2 The Supplier shall indemnify the Customer against any claims arising from direct damage to property caused by any defect in the goods or by negligence of the Supplier's employees in connections with the performance of their duties.
- 9.3 The Supplier's total liability under this Clause shall be limited to the value of the goods for any one event or connection of events.
- 9.4 In no event shall the Supplier be liable to the Customer for loss of use, profits or contracts or any other indirect or consequential damages or losses however arising.



## 10. SOFTWARE

- 10.1 With regard to any Software developed or provided by the Supplier or licensed by it specifically for the Order the title thereto shall remain in the Supplier or the licensor (as the case may be) but the Supplier shall grant to the Customer the free and unfettered rights to use and modify such Software for his own use. The Supplier shall not be responsible for any defect in such Software should the Customer modify the same.
- 10.2 With regard to any software supplied under the order over which the Supplier and/or third parties hold title of other rights, the Supplier shall permit or procure for the Customer (as the case may require) the right to use and apply that Software in the operation of the goods.
- 10.3 With regard to any Software, which is referred to in sub-clause 15.2 above the Customer undertakes not to disclose or make available any part or parts thereof to any third party without the prior, written consent of the Supplier.
- 10.4 Software is supplied on the terms of the Licence Agreements provided with the goods which is to be read in conjunction with these General Terms and Conditions.

