

## Service Provider Agreement

THIS AGREEMENT is made on the Effective Date.

### BACKGROUND:

- (A) The Supplier is the provider of certain managed services including connection, workplace and multi-cloud based services as more specifically detailed in the relevant Order Form.
- (B) The Customer wishes to procure certain services from the Supplier upon the terms and conditions of this Agreement.

### OPERATIVE PROVISIONS:

#### 1. DEFINITIONS

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

**“Acceptable Use Policy”** the Supplier’s acceptable use policy available at [www.timico.co.uk/terms-policies](http://www.timico.co.uk/terms-policies) and any Third Party Services Provider’s applicable acceptable/fair use policy each as amended from time to time

**“Applicable Law”** any:

(a) statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal in England and Wales); and/or

(b) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body in England and Wales,

that relates to this Agreement

**“Background Information”** all and any materials, documents, drawings, plans or other information made available by the Customer to the Supplier in connection with the negotiation and preparation of this Agreement and during any process of competitive tender which preceded such negotiation and preparation (including any invitation to tender prepared by the Customer, if applicable), and any information supplied by the Customer pursuant to clause 11

**“Business Day”** a day other than Saturday or Sunday or a public or bank holiday in England

**“Charges”** the charges payable by the Customer to the Supplier for the provision of the Services as set out in the Order Form

**“Commencement Date”** in respect of each Service set out in the Order Form, the earlier of: (i) the date on which delivery of that Service is made, commences or goes live; or (ii) the date on which the Supplier commits to a Third Party Services Provider to receive any product or service from that Third Party Services Provider in order to allow the Supplier to provide that Service to the Customer

**“Confidential Information”** has the meaning given to it in clause 18.1.1

**“Core Charges”** all Charges which are not calculated on the basis of the Supplier’s day rates

**“Customer”** the entity named as the Customer on the applicable Order Form

**“Customer Requirements”** the requirements (if any) set out in the Annex to the Order Form

**“Customer Equipment”** equipment purchased by the Customer under this Agreement

**“Customer Materials”** any content, documentation, materials, software or equipment provided by the Customer which the Supplier uses pursuant to this Agreement or which runs on any Network

<b>“Dispute”</b>	has the meaning given to it in clause 27.1	<b>“Initial Term”</b>	the period set out in the Order Form for a Service which shall commence on the Commencement Date
<b>“Effective Date”</b>	means the date of this Agreement that will be the date of the initial Order Form.	<b>“Intellectual Property Rights”</b>	any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in design, know-how, confidential information and all or any other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world, together with all or any goodwill relating thereto
<b>“Estimated Monthly Charges”</b>	shall be as set out in the Order Form	<b>“Monthly Fee Equivalent”</b>	means either:  (i) one (1) months’ Charges based upon the average monthly invoice properly raised by the Supplier for the relevant Service in accordance with this Agreement in the six (6) months immediately preceding the most recent Event of Default (or the relevant suspension or unavailability, for the purposes of clause 12.7); or  (ii) where the first six (6) months of the relevant Service Term are yet to expire, the Estimated Monthly Charges for the relevant Service; or  (iii) where the Charges are invoiced annually and there are no Estimated Monthly Charges, one twelfth of the annual Charges for the relevant Service
<b>“Event of Default”</b>	has the meaning given to it in clause 12.1	<b>“MyTimico”</b>	the customer portal established and maintained by the Supplier and accessible by the Customer at <a href="http://my.timico.co.uk">http://my.timico.co.uk</a>
<b>“Fees”</b>	the fees (other than the Charges) payable by the Customer to the Supplier in connection with each Service including the Termination Fee and any other fee specified in the Supplier’s Standard Charges Document or in any relevant Service Description, Supplementary Terms or Services Specific Schedule	<b>“Network”</b>	the voice and data communications network operated by the Supplier or any Third Party Services Provider
<b>“Fee Threshold”</b>	an amount equal to either: (i) the “Fee Threshold” amount specified in the Order Form; or (ii) where no such amount is specified in the Order Form, a sum of money calculated in accordance with the relevant Service Description or Services Specific Schedule	<b>“Order Form”</b>	an order form setting out the Customer Equipment and/or Services being ordered under the terms of this Agreement
<b>“Force Majeure Event”</b>	in relation to either Party, any cause affecting the performance by that Party of its obligations arising from acts, events, omissions or circumstances beyond the reasonable control of that Party, including acts of God, acts of governmental, supra-national, highways or other authority or any public telecommunications operator, outbreak of hostilities, national emergency, riots, civil commotion, terrorism, fire, explosion, flood, epidemic, lock outs (not by that Party), strikes and other industrial disputes (not relating to that Party’s workforce), restraints or delays affecting carriers, and inability or delay in obtaining supplies or adequate or suitable materials	<b>“Party”</b>	the Supplier or the Customer, who together shall be the “Parties”
<b>“Index Rate”</b>	the annual percentage increase to be applied to the Charges as set out in the Order Form	<b>“Representative”</b>	the person nominated by each Party in accordance with clause 13.1
<b>“Insolvency Event”</b>	has the meaning given to it in clause 15.1.2.1	<b>“Second Representative”</b>	the second representatives nominated by each Party in accordance with clause 13.2

<b>“Services”</b>	each of the services set out in the Order Form and described in the relevant Service Description or Services Specific Schedule	<b>“Supplier”</b>	Timico Limited (Company registration number 04841830) whose registered office is at Beacon Hill Park, Newark, Nottinghamshire, NG24 2TN
<b>“Service Administration Password”</b>	a unique password determined by the Customer which must be supplied to the Supplier before any request to change the scope of the Services or the terms of this Agreement will be considered	<b>“Supplier Equipment”</b>	any equipment or apparatus belonging to the Supplier or a Third Party Services Provider that is used in connection with the provision of the Services, including any equipment or apparatus identified as Supplier Equipment in the relevant Service Description or Services Specific Schedule
<b>“Service Description”</b>	a document published by the Supplier which sets out details of the Service including the scope and permitted use of the Service and which (save for the “introduction” and “overview” section) may be amended from time to time by the Supplier	<b>“Supplier’s Standard Charges Document”</b>	the standard charges document available at <a href="http://www.timico.co.uk/terms-policies">www.timico.co.uk/terms-policies</a> as the same may be amended from time to time
<b>“Service Levels”</b>	the service levels for the relevant Service as set out in the applicable Service Description or Services Specific Schedule	<b>“Suspension Period”</b>	any period during which the Services (or any part thereof) are suspended pursuant to clause 10
<b>“Services Specific Customer Obligations”</b>	the obligations of the Customer set out in the applicable Service Description, Supplementary Terms or Services Specific Schedule	<b>“Suspended Services”</b>	any Services that are temporarily suspended pursuant to clause 10
<b>“Services Specific Schedule”</b>	the schedule or schedules referred to as such in the applicable Order Form that set out the scope of the relevant Services and which may be amended from time to time by the Supplier	<b>“Term”</b>	the period from the Effective Date to the Termination Date
<b>“Service Term”</b>	the Initial Term for the relevant Service and any further period following the end of the Initial Term for which the Agreement continues pursuant to clause 2	<b>“Termination Date”</b>	the date on which this Agreement is terminated or expires
<b>“Service Use Obligations”</b>	the Customer’s obligations under clause 6 of this Agreement	<b>“Termination Fee”</b>	means (a) where the Agreement or relevant Service is terminated before the start of the Initial Term, the sum of (i) the costs incurred or payable, or yet to be incurred or become payable, by the Supplier in relation to that Service; and (ii) the costs incurred by, or payable to, any Third Party Services Provider in relation to that Service; and (iii) any additional amounts specified in the Supplier’s Standard Charges Document or in any Service Description or Services Specific Schedule payable in relation to the relevant Service(s) on termination; or (b) where the Agreement or relevant Service is terminated during or after the start of the Initial Term, a sum equal to the greater of either (i) the Fee Threshold; or (ii) the amount paid or payable by the Supplier to Third Party Services Providers in respect of uncancellable Third Party Services procured specifically on behalf of the Customer in relation to the relevant Service(s) where the relevant costs have not been recovered from the Customer as at the Termination Date
<b>“Supplementary Terms”</b>	the Supplementary Terms for Managed Services; Supplementary Terms for Managed Services (Telecoms); Supplementary Terms for Managed Services (Colocation); and Supplementary Terms for Equipment Purchase, as applicable		

			and will not limit the sense of the words preceding that term.
	<b>“Third Party Services”</b>	any part of the Services that the Supplier procures from a third party and that the Supplier uses in order to provide the Services	1.9 This Agreement comprises:
			1.9.1 these clauses;
	<b>“Third Party Services Provider”</b>	a provider of Third Party Services	1.9.2 the relevant Supplementary Terms (if any) (as specified in the Order Form) and annexes or any other documents referred to therein;
	<b>“Third Representative”</b>	the third representatives nominated by each Party in accordance with clause 13.2	1.9.3 the applicable Service Description(s) (if any) (as identified in the Order Form) and annexes or any other documents referred to therein;
	<b>“VAT”</b>	Value Added Tax	1.9.4 the relevant Services Specific Schedule(s) (if any) (as specified in the Order Form) and annexes or any other documents referred to therein;
	<b>“Virus”</b>	has the meaning given in clause 6.5.3	1.9.5 the Order Form and annexes or any other documents referred to therein; and
	<b>“Volume Change”</b>	a variation in the then current volume (as detailed in relevant the Order Form) of a type of Service which is provided by the Supplier under this Agreement (excluding termination of the relevant Service)	1.9.6 any Customer Requirements and any other documents referred to therein.
1.2		The index and headings to the clauses and schedules of this Agreement shall not affect its construction.	1.10 In the event of any conflict or inconsistency between any elements of the Agreement, such conflict or inconsistency shall be resolved in accordance with the order of precedence set out in clause 1.9, with the earlier items taking precedence over the later items, and all listed items taking precedence over any other document referred to in this Agreement.
1.3		Where the context so requires or admits, the masculine shall include the feminine and the neuter, and the singular shall include the plural and vice versa.	
1.4		Any reference to “writing” or cognate expressions includes references to any communication effected by email or any comparable means.	<b>2. DURATION</b>
1.5		Any reference in this Agreement to a clause or schedule is a reference to a clause of or a schedule to this Agreement and references to paragraphs are to paragraphs in the schedule in which such paragraph appears.	2.1 This Agreement shall commence on the Effective Date and shall (subject to the provisions for termination set out in this Agreement) continue until the end of the Initial Term and thereafter unless and until terminated in accordance with this Agreement.
1.6		The expression “person” means any individual, firm, company, incorporated association, partnership, government, state or agency of state, or joint venture.	<b>3. PROVISION OF THE SERVICES</b>
1.7		Any reference to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted, or replaced provided that in the case of amendments, consolidation, modification, extensions, re-enactments or replacements made after the date of this Agreement they shall not have effected any substantive change to that provision.	3.1 The Supplier agrees to supply the Services to the Customer from the Commencement Date for the relevant Service upon the terms and conditions of this Agreement, and in consideration of the payment of the Charges and Fees by the Customer.
1.8		Any phrase in this Agreement introduced by the term “include”, “including”, “in particular” or any similar expression will be construed as illustrating	3.2 The Supplier shall provide the Services to the Customer using reasonable skill and care in accordance with prevailing good industry practice and using personnel who are suitably experienced, qualified and trained.
			3.3 The Supplier shall use its reasonable endeavours to comply with any applicable Service Levels.

- 4. TRANSITION**
- 4.1 The Supplier shall use its reasonable endeavours to ensure a smooth transition from any relevant existing services to the Services.
- 4.2 Unless otherwise agreed in writing, any specific transition services and support provided by the Supplier shall be subject to Charges on a time and materials basis at the applicable daily rate set out in the Supplier's Standard Charges Document. Such support shall be undertaken as part of any time and materials days specified in the Order Form.
- 5. TIMESCALES**
- 5.1 Each Party shall use its reasonable endeavours to undertake its responsibilities detailed in this Agreement within the timescales specified or, if no timescales are specified, as soon as reasonably practicable, but time shall not be of the essence.
- 6. CUSTOMER OBLIGATIONS**
- 6.1 Without prejudice to its other obligations under this Agreement, the Customer undertakes to the Supplier that it shall during the Term:
- 6.1.1 promptly provide the Supplier with such information about its requirements for the Services as the Supplier may reasonably require and request from time to time in order to enable it to provide the Services in accordance with this Agreement;
- 6.1.2 provide the Supplier with such access to any premises, systems and networks as the Supplier may reasonably require for the purposes of delivering the Services and co-operate with the Supplier's reasonable requests from time to time for assistance and information to enable the Supplier to perform its obligations under this Agreement and comply with its obligations under Applicable Laws;
- 6.1.3 permit the Supplier (on reasonable notice and during normal working hours) to enter onto the Customer's premises to audit the Customer's compliance with its obligations under this Agreement. The Customer shall co-operate in all respects with any audit and allow the Supplier access to relevant documents, data, software, equipment and other materials;
- 6.1.4 procure all necessary rights and licences to enable the Supplier to perform its obligations under this Agreement in respect of the Services, including in respect of any third party software other than where the Supplier has specifically agreed in writing to acquire the relevant software licences;
- 6.1.5 comply with, insofar as they relate to the Services provided under this Agreement:
- 6.1.5.1 the Acceptable Use Policy;
- 6.1.5.2 all Applicable Laws and all codes of practice and other regulations issued by any competent authority;
- 6.1.5.3 all reasonable instructions of the Supplier or a Third Party Services Provider; and
- 6.1.5.4 all instructions issued by a regulatory body and notified to the Customer;
- 6.1.6 not use or permit the Services to be used for:
- 6.1.6.1 any illegal, immoral or unlawful purpose, or any purpose other than that for which the Services are provided; or
- 6.1.6.2 the transmission of any material which is illegal, defamatory, offensive, of an abusive or menacing character or that is likely to be deemed a nuisance;
- 6.1.7 notify the Supplier promptly in writing of any change to its name, operating address or registered office address;
- 6.1.8 ensure that its personnel do not engage in any inappropriate or abusive behaviour when using any helpdesk or customer services facility provided as part of the Services;
- 6.1.9 not be involved in, or knowingly, recklessly or negligently permit or negligently allow any other person to be involved in fraud, and to notify the Supplier immediately on the Customer becoming aware of or suspecting any fraud in connection with its use of the Services; and
- 6.1.10 comply with the Services Specific Customer Obligations.
- 6.2 The Customer shall:
- 6.2.1 register with and generate a unique password for an account on MyTimico within 21 days of the Effective Date;
- 6.2.2 determine and provide to the Supplier a unique Service Administration Password (which is separate to its MyTimico password) by the Commencement Date for the relevant Service;
- 6.2.3 be responsible for safeguarding its MyTimico credentials and Service Administration Password;
- 6.2.4 be liable for any use of the Customer's MyTimico account and for any changes to this Agreement requested by any individual quoting the Service Administration Password;
- 6.2.5 until such time as it has generated and notified the Supplier of its Service Administration Password, be liable for all consequences of the Supplier acting on the instructions of any

- individual the Supplier reasonably considers to have authority to provide such instructions on behalf of the Customer; and
- 6.2.6 comply with the General Terms and Conditions for use of Website and Portals of the Supplier available at [www.timico.co.uk/terms-policies](http://www.timico.co.uk/terms-policies), as amended from time to time.
- 6.3 The Customer acknowledges that there may be a delay between usage of Services and Charges being incurred and information relating to such usage or Charges being shown on MyTimico.
- 6.4 The Customer shall not be relieved from liability for any call or other usage related Charges where such usage was unintentional, including usage arising from fraud committed against, or a security breach suffered by the Customer, except where any such fraud or security breach is caused directly by the negligence of, or a breach of this Agreement by, the Supplier. The Customer acknowledges that the Supplier recommends the Customer implements appropriate access security and internal policies, such as call barring, to manage its usage and Charges.
- 6.5 Where the Services include the use by the Customer of the Network, the Customer shall:
- 6.5.1 not connect any equipment or apparatus whatsoever (including without limitation phones, extensions, wiring, sockets and other equipment) to the Network without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed. The Supplier may withdraw any such consent at any time by giving the Customer reasonable notice;
- 6.5.2 ensure that any equipment or apparatus which the Customer wishes to connect or connects to the Network conforms at all times to the standard or standards (if any) for the time being designated under the Communications Act 2003 or any other Applicable Law, and the Supplier shall not be under any obligation to connect or keep connected any of the Customer's apparatus if it does not comply or if, in the reasonable opinion of the Supplier, it is likely to cause death, personal injury, damage or to impair the quality of any Services provided by the Supplier; and
- 6.5.3 not introduce to the Network any viruses or other software program or code which has the capability to destroy, interfere with, corrupt, or cause undesired effects on the content or accessibility of program files, data or other information, whether or not its operation is immediate or delayed ("Viruses") and take all reasonable steps to prevent such introduction of Viruses.
- 6.6 Save to the extent provided by the Supplier as part of the Services, the Customer shall be responsible for the maintenance, upgrading and security of its IT infrastructure. Accordingly, where any hardware or software forming part of the Customer's IT infrastructure that is necessary for the performance of the Services is no longer supported by the relevant third party supplier (ie it becomes "end of life"), the Customer shall ensure that such hardware or software is promptly replaced and/or upgraded as necessary to enable the Supplier to continue to provide the Services. Where the Customer's failure to meet its obligations under this clause 6.6 materially impairs the ability of the Supplier to provide any part of the Services, the Supplier may, at its discretion, terminate the affected Services.
- 7. RETENTION OF TITLE AND SUPPLIER EQUIPMENT**
- 7.1 Title to any Customer Equipment shall not pass to the Customer until the Supplier is in receipt of payment in full for the relevant hardware which in the case of hardware that is fully amortised in the accounts of the Supplier means at the point of full amortisation.
- 7.2 Title to any Supplier Equipment shall remain with the Supplier (or the relevant Third Party Services Provider, as applicable) at all times.
- 7.3 The Customer shall:
- 7.3.1 be responsible for the safe use of the Services and the safe use and safe keeping of any related equipment (including the Customer Equipment and any Supplier Equipment located on premises owned or controlled by the Customer) from delivery; and
- 7.3.2 use reasonable endeavours to ensure that no one tampers with, alters or interferes with any Supplier Equipment whilst it is located on premises owned or controlled by the Customer or otherwise under the Customer's control.
- 7.4 The Customer shall not:
- 7.4.1 remove, deface or obscure any asset tag or other identifying mark on any Supplier Equipment or on any Customer Equipment in respect of which title has not yet passed to the Customer; or
- 7.4.2 without the prior written agreement of the Supplier, remove any Supplier Equipment or any Customer Equipment in respect of which title has not yet passed to the Customer from the Customer site to which it was delivered or at which it was installed by the Supplier.
- 7.5 On the cancellation, termination or expiry of any Services provided by the Supplier to the Customer under this Agreement, without limiting any other right or remedy it may have, the Supplier may at its sole option in relation to any Customer Equipment no longer used in the provision of the Services to the Customer and for which title has not yet passed to the Customer and all Supplier Equipment no longer used in the provision of the Services to the Customer:

- 7.5.1 charge the Customer the net book value of the relevant equipment. Following payment of such sum to the Supplier, the title to such equipment shall transfer to the Customer; or
- 7.5.2 require the Customer to deliver up the relevant equipment and, if the Customer fails to do so promptly, enter any premises of the Customer in which such equipment is located in order to recover it.
- 8. CHARGES AND FEES**
- 8.1 Unless otherwise specified on the Order Form, each invoice for Charges and Fees payable under this Agreement will be available only on MyTimico and the provisions of this Clause 8 will apply to each such invoice. Fees will be applied where paper bills are requested at the rate set out in the Supplier's Standard Charges Document.
- 8.2 Save as otherwise stated on the Order Form, the Charges and Fees shall be invoiced monthly in arrears. Termination Fees shall be invoiced on the date of termination of the relevant Service(s). Except where otherwise expressly stated in this Agreement, the Customer will pay to the Supplier the Charges and Fees within thirty (30) days of the date of the Supplier's invoice.
- 8.3 The preferred method of payment is direct debit. Fees will be applied for credit card, cheque and BACS payments at the rate set out in the Supplier's Standard Charges Document.
- 8.4 Without prejudice to any other right or remedy which it might have, the Supplier shall be entitled to suspend performance of the Services pursuant to **clause 10.4** if the Customer fails to pay the Charges or Fees in accordance with this **clause 8**. For the avoidance of doubt during any such Suspension Period the Customer will continue to be liable to pay the applicable Charges and Fees.
- 8.5 All Charges calculated by reference to day rates shall be based on the Supplier's day rates applicable to Services provided on a time and materials basis as set out in the Supplier's Standard Charges Document.
- 8.6 The Supplier shall be entitled to increase the Core Charges for each Service in its absolute discretion at the end of the Initial Term. During the Initial Term, the Supplier shall be entitled to increase the Core Charges for each Service once in each twelve (12) month period beginning on the first anniversary of the Commencement Date for that Service by the Index Rate or, if no Index Rate is provided for in the Order Form, by such amount as the Supplier, in its absolute discretion, may determine. In addition, the Core Charges for each Service may be increased on one month's notice to the Customer at any time throughout the Term by an amount to reflect material increases in:
- 8.6.1 the charges payable by the Supplier to a Third Party Services Provider in respect of the relevant Third Party Services, where the Supplier was unaware of the details of such increases as at the respective Commencement Date; and
- 8.6.2 other Supplier costs which are outside the Supplier's direct control, including: (i) currency exchange rate fluctuations; (ii) increased energy costs; or (iii) general overhead costs where the percentage annual increase in the Retail Prices Index published by the Office for National Statistics (or any replacement of the same) materially exceeds the Index Rate.
- 8.7 In the event that the Supplier's agreement with any Third Party Services Provider is varied or terminated at the request of the Third Party Services Provider such that the Supplier is no longer able to provide all or any part of the Third Party Services, the Supplier shall use its reasonable endeavours to promptly put in place alternative arrangements for the supply of the relevant parts of the Services which minimise any adverse impact (including any increase in the Charges) to the Customer. If, notwithstanding such endeavours, the Supplier's costs of providing the Services to the Customer increase as a result of such alternative arrangements, the Supplier shall be entitled to increase the relevant Core Charges for the affected Services to reflect this increase. If the Supplier is unable to make such alternative arrangements:
- 8.7.1 the Supplier shall be entitled to terminate any affected Services with immediate effect by notice in writing to the Customer; and
- 8.7.2 where the affected Services constitute a substantial proportion of the Services provided under this Agreement, the Supplier shall be entitled to terminate this Agreement with immediate effect by notice in writing to the Customer;
- 8.7.3 where the Customer terminates a Service or this Agreement under clause 8.7.1 or clause 8.7.2 respectively, the Customer agrees to pay any pro-rated amount of the Fee Threshold, calculated from the Commencement Date until the Termination Date of the relevant Service(s) or this Agreement, as applicable.
- 8.8 In the event that the Fee Threshold is not met during the Initial Term, the Customer agrees that, the Supplier may invoice the Customer for, and the Customer agrees to pay, the balance of the Fee Threshold on the expiry of the Initial Term.
- 8.9 The Supplier may charge the Customer for:
- 8.9.1 all reasonable costs and expenses which the Supplier incurs for any repair or replacement works which the Supplier considers necessary or appropriate in the event that someone tampers with, alters or interferes with any Customer

- Equipment or Supplier Equipment and any such Customer Equipment or Supplier Equipment is damaged or lost; and
- 8.9.2 the costs associated with responding to repeated helpdesk calls regarding the same substantive issue where the issue is caused by the Customer failing to implement previously recommended solutions or workarounds;
- 8.10 Save as otherwise expressly provided in this Agreement or required by law, all payments to be made by the Customer to the Supplier under this Agreement shall be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 8.11 If the Customer, on bona fide grounds, disputes any part of an amount invoiced by the Supplier, the Customer shall promptly and in any event within thirty (30) days of the date of the relevant invoice notify the Supplier through MyTimico with a copy by email via <http://www.timico.com/support-centre> of that dispute giving full details of the nature of the dispute and the amount that it claims should have been invoiced and:
- 8.11.1 the Customer shall pay, if not already paid, that part of the invoice which is not disputed in accordance with this clause 8;
- 8.11.2 the Parties shall negotiate in good faith to resolve the dispute, but if a resolution cannot be reached within fourteen (14) days of the Customer giving notice under this clause 8.11, clause 27.1 shall apply to the dispute;
- 8.11.3 the Supplier shall provide all such information and evidence as may be reasonably necessary to verify the disputed sum; and
- 8.11.4 within seven (7) days following resolution of the dispute, the Customer shall pay to the Supplier that part of the disputed sum (if any) as it is resolved is payable by the Customer or, as applicable, the Supplier shall reimburse the Customer any part of the disputed sum already paid by the Customer that it is resolved was not payable by the Customer.
- 8.12 Any invoice which is not disputed in accordance with clause 8.11 shall be deemed to be fully accepted by the Customer together with each invoice that preceded it, whether or not any such preceding invoice includes any amount reimbursed as a consequence of a dispute in the most recent invoice.
- 8.13 The Charges and Fees quoted by the Supplier exclude value added tax and any other applicable taxes, which shall be added at the prevailing rate where applicable and paid by the Customer following delivery of a VAT invoice.
- 8.14 Where the Supplier is unable to complete installation or “make live” any part of Services contemplated by an Order Form as a consequence of the Customer being unable to make themselves, their premises or any other access rights reasonably required by the Supplier, the Supplier shall be entitled to invoice the Charges and/or Fees in respect of those Services from the earliest point that the Supplier could have otherwise completed the installation or “made live” the Services had the Customer made themselves, their premises or any other access rights reasonably required by the Supplier available.
- 8.15 Unless otherwise confirmed in writing by the Supplier, where a Service is renewed and/or a Service is amended, the following terms will apply with regards revised Charges for those renewed/amended Services:
- 8.15.1 renewal of Service with no Service amendments – revised Charges apply from the first invoice raised at least 30 days after the date of renewal of the Service or, if the Service is still within its Initial Term, from the first invoice occurring after such Initial Term ends; and/or
- 8.15.2 renewal of Service with Service amendments or Service amendments – revised Charges apply from the latter of (a) the first invoice after the date of renewal or (b) the date on which the Service amendment is completed.
- 9. CHANGES TO THE SERVICES**
- 9.1 The Supplier may update the Service Descriptions (other than the “overview” section) or the Services Specific Schedules forming part of this Agreement at any time. All such updates will be notified to the Customer through MyTimico and save as otherwise specified in the notification such updates will come into force at the end of the month following such notification.
- 9.2 The Customer may, at any time during the Service Term, subject to any minimum notice period set out in the relevant Service Description or Services Specific Schedule, request a Volume Change. Any Volume Change will be effective on the Supplier notifying the Customer of acceptance of the Volume Change in writing.
- 9.3 In addition to its right to terminate this Agreement under clause 15.4, the Customer may terminate any part of the Services by providing a minimum of 90 days’ written notice to the Supplier. Any such notice shall only be validly given if notified to the Supplier via MyTimico with a copy by email to [cancellation@timico.co.uk](mailto:cancellation@timico.co.uk). On any such termination, the Customer shall pay to the Supplier the Termination Fee (if any) in relation to the terminated Service.



- 9.4 For the avoidance of doubt, any Volume Change or termination of a part of the Services will not, unless otherwise agreed by the Supplier in writing, have any effect on the Fee Threshold. Accordingly, any reduction in the Charges payable following a Volume Change or termination that reduces the overall Charges for the relevant Service may give rise to a payment under clause 8.8 or a Termination Fee.
- 9.5 Subject to clause 9.8, any variation to the Agreement other than a Volume Change or termination of a part of the Services must be made in compliance with the following provisions:
- 9.5.1 The Supplier shall notify the Customer in writing, within ten (10) Business Days (or such longer period as may be agreed) of receipt of a written variation request from the Customer or the making of a written variation recommendation by the Supplier (each a “**Variation Notice**”), of any time required to investigate the effect upon this Agreement of implementing such variation.
- 9.5.2 Subject to **clause 9.5.1**, following receipt of a Variation Notice, the Supplier shall submit to the Customer as soon as reasonably practicable a full written quotation for the variation described in the Variation Notice, specifying the increase (if any) which will be required to the Charges, the implementation costs connected with such variation (if any) and the changes (if any) which will be required to this Agreement (the “**Quotation**”).
- 9.5.3 Within ten (10) Business Days (or such longer period as may be agreed) of receipt of a Quotation the Customer must give notice to the Supplier in writing of whether it accepts or rejects the Quotation.
- 9.5.4 The variation will take effect (and the Quotation shall form part of this Agreement) on:
- 9.5.4.1 , receipt by the Supplier of notice from the Customer that the Customer accepts the Quotation, providing that the Supplier has not already served notice that it rejects the proposed variation; or
- 9.5.4.2 the expiry of ten (10) Business Days (or such longer period as may be agreed) after receipt of the Quotation, unless the Customer has responded to the Quotation in accordance with **clause 9.5.3**.
- 9.5.5 The Supplier will implement any change that has taken effect pursuant to clause 9.5.4 in accordance with the Quotation and the Customer will perform any obligations imposed on it in the Quotation in accordance with the terms of the Quotation.
- 9.5.6 The Supplier shall be entitled to reject any variation requested at any time between delivery of the Quotation and the date on which the variation takes effect in accordance with clause 9.5.4.
- 9.6 Until such time as any variation is effective in accordance with **clause 9.5** the Parties will, continue to perform their obligations under this Agreement as if such variation had not been requested or recommended.
- 9.7 The Customer agrees that during the Term it shall not order services from a third party of the same type as any of the Services without first giving the Supplier a reasonable opportunity to provide a Quotation for such services.
- 9.8 The Supplier shall be entitled to vary the terms of this Agreement at any time by notice to the Customer in writing:
- 9.8.1 where such variation is necessary as a result of a variation required by a Third Party Services Provider to their contract with the Supplier. The Supplier shall use its reasonable endeavours to minimise any such variations and their impact on the Services and this Agreement; or
- 9.8.2 where such variation does not amend the Services, Charges or Fees or materially impact the overall risk allocation as between the Supplier and the Customer.
- 9.9 Any variation made pursuant to clause 9.8 will take effect immediately upon the Supplier giving written notice of the variation to the Customer.
- 9.10 Where any Service is ordered by the Customer to replace an existing Service provided to the Customer, unless otherwise explicitly stated, the Customer assumes all responsibility for submitting a termination notice for the Service by giving at least ninety (90) days’ notice to the Supplier. The termination notice should be submitted to the Supplier through MyTimico with a copy by email to [cancellation@timico.co.uk](mailto:cancellation@timico.co.uk) and must be given in accordance with any applicable Supplier cancellation policy. The Supplier’s standard Charges for termination (including the Termination Fee) will apply. Where the existing Service and the replacement Service run concurrently for any period, it is the Customer’s responsibility to determine at what time to submit the termination notice and the duration for which the Services will run concurrently. During any period when Services run concurrently, the Supplier will charge the Customer for both Services.
- 10. SUSPENSION / INTERRUPTION OF THE SERVICES**
- 10.1 The Supplier shall be entitled, subject to providing reasonable notice to the Customer, to temporarily suspend and take out of use any Services:-

- 10.1.1 to improve, update or alter any content of the Services;
- 10.1.2 to replace, maintain, repair and upgrade any of the Services;
- 10.1.3 to rectify any malfunction, fault or damage;
- 10.1.4 to take any other action that the Supplier reasonably considers necessary as a reasonable and prudent provider of the Services; or
- 10.1.5 in any situation where the Supplier is entitled to terminate the Agreement, provided that such suspension shall be without prejudice to the Supplier's other rights and remedies including the right to subsequently terminate the Agreement.
- 10.2 The Supplier shall be entitled at any time to temporarily suspend and take out of use any Services without giving notice to the Customer:-
  - 10.2.1 in an emergency;
  - 10.2.2 where the Supplier is required to do so by the relevant Third Party Services Provider;
  - 10.2.3 to carry out urgent maintenance, repair or upgrade to ensure the Services can continue to be supplied;
  - 10.2.4 where required by any regulatory, governmental or other competent authority; or
  - 10.2.5 to deal with any actual or suspected security breach, Virus, or attack on the Services.
- 10.3 Where Services are suspended other than under clauses 10.1.5 or 10.4:
  - 10.3.1 the Supplier will use its reasonable efforts to minimise any Suspension Period;
  - 10.3.2 where possible, the Supplier will carry out non-emergency maintenance or upgrading at a suitable time agreed with the Customer in advance;
  - 10.3.3 the Supplier will use its reasonable endeavours to inform the Customer through MyTimico or otherwise in writing at least twenty-four (24) hours in advance that the Services shall be suspended;
  - 10.3.4 the Supplier shall promptly inform the Customer through MyTimico or otherwise in writing when the Services are fully restored; and
  - 10.3.5 where any suspension affects multiple customers, the Supplier shall where possible update its web page at [status.timico.co.uk](http://status.timico.co.uk) to provide brief details of the outage and its resolution.
- 10.4 In the event that the Customer is in breach of its payment obligations or the Service Use Obligations, the Supplier may at its reasonable discretion (and without prejudice to any other rights which the Supplier may have) and upon giving the Customer prior written notice, suspend the provision of all or any of the Services from a date and time not less than seven (7) days from the date of such written notice having been given. The Supplier shall recommence provision of the Suspended Services as soon as reasonably practicable following the Customer's fulfilment of its payment obligations or the point at which the Customer demonstrates to the Supplier's reasonable satisfaction that it has resumed ongoing compliance with the Service Use Obligations. In the event that the breach or non-compliance is not remedied within the period of seven (7) days from the date that the Suspended Services are suspended, then (without prejudice to any other rights which the Supplier may have) such breach or non-compliance shall constitute a material breach not capable of remedy and giving rise to an immediate right of termination under clause 15.1.1. The Customer shall be liable for any costs associated with any suspension under this clause 10.4.
- 10.5 In the event that a Third Party Services Provider suspends the provision of all or any of the Third Party Services to the Supplier, the Supplier shall have the right to suspend the provision of any part of the Services which is wholly or partly dependent on the Supplier receiving the Third Party Services. Where this clause 10.5 applies the Supplier shall give to the Customer as much notice as is reasonably practicable that the Services will be suspended and shall resume the provision of the Suspended Services as soon as is reasonably practicable after the resumption of the provision of the Third Party Services to the Supplier.
- 10.6 During any Suspension Period:
  - 10.6.1 the Supplier shall not be obliged to perform the Suspended Services or meet any Service Levels applicable to the Suspended Services; and
  - 10.6.2 the Customer shall not be obliged to pay any Charges in respect of the Suspended Services, unless the suspension was due to the Customer's breach of its obligations under this Agreement.
- 11. WARRANTIES**
  - 11.1 The Customer acknowledges that the Supplier has relied and will rely upon the Background Information. The Customer warrants that the Background Information has been and will at the time of supply be compiled with reasonable skill and care and shall not by virtue of any error or omission be misleading or inaccurate in any material respect.
  - 11.2 In connection with this Agreement, the Supplier provides the following warranties only to the

- Customer (and the Customer acknowledges that any other statement in this Agreement that could be interpreted as a warranty will not be treated as such):
- 11.2.1 the Supplier will provide the Services exercising reasonable skill and care and in accordance with the terms of this Agreement; and
  - 11.2.2 subject to the Customer's obligations set out at clause 6.1.4, the Supplier has full right, power and authority to provide the Services to the Customer in accordance with the terms of this Agreement.
  - 11.3 If the Supplier fails to comply with the warranty in **clause 11.2**, the Supplier may at its option take such steps as it deems necessary to either:
    - 11.3.1 remedy such failure; or
    - 11.3.2 refund such part of the Charges as relates to the relevant part of the Services,

provided that the exercise of either option by the Supplier shall constitute an entire discharge of the Supplier's liability for such failure and the liability of the Supplier under the warranty in clause 11.2 shall in no event exceed the Charges payable in respect of the relevant part of the Services.
  - 11.4 Except as provided expressly in this Agreement, all other warranties, express or implied, are strictly excluded to the fullest extent permitted by law.
- 12. LIMITATION OF LIABILITY**
- 12.1 The following provisions set out the Supplier's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:
    - 12.1.1 any breach of its contractual obligations under this Agreement; and
    - 12.1.2 any representation, misrepresentation (whether innocent or negligent), statement, tortious act or omission (including negligence), or breach of statutory duty arising under or in connection with this Agreement,

(each an "Event of Default" for the purposes of this Agreement).
  - 12.2 Nothing in this Agreement will limit the Supplier's liability for:
    - 12.2.1 death or personal injury caused by negligence;
    - 12.2.2 fraud or fraudulent misrepresentation made by the Supplier;
    - 12.2.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; and
    - 12.2.4 any other liability which cannot be excluded or limited by law.
  - 12.3 Subject to clause 12.2, the Supplier's aggregate liability for all Events of Default shall not exceed:
    - 12.3.1 in the case of Events of Default caused by the acts or omissions of Third Party Service Providers or to the extent the liability arises from loss of or damage to Customer hardware or equipment, the total amount recovered by the Supplier from the relevant Third Party Service Providers in respect of the relevant Events of Default arising from their acts or omissions; and
    - 12.3.2 for all other Events of Default, 600% of the Monthly Fee Equivalent for all Services provided to the Customer, or any other percentage stated in the Order Form.
  - 12.4 Subject to clause 12.2, the Supplier shall not be liable:
    - 12.4.1 for:
      - 12.4.1.1 loss of revenue;
      - 12.4.1.2 loss of actual or anticipated profits;
      - 12.4.1.3 loss of business or contracts;
      - 12.4.1.4 loss of anticipated savings;
      - 12.4.1.5 loss of or damage to, or corruption of, data;
      - 12.4.1.6 loss of reputation; or
      - 12.4.1.7 loss of goodwill,

in each case whether the relevant losses are special, direct, indirect or consequential; or
    - 12.4.2 to the extent any failure to provide the Services in accordance with this Agreement results from:
      - 12.4.2.1 the failure of the Customer to comply with its obligations under this Agreement;
      - 12.4.2.2 any incidents, issues or services that are outside the scope of the Services; or
      - 12.4.2.3 any delay or failure by the Customer to give instructions, authority or information where the same has been sought by the Supplier; or
    - 12.4.3 for any type of special, indirect or consequential loss, even if (in each case) such loss was reasonably foreseeable or the Supplier had been

- advised of the possibility of the Customer incurring the same.
- 12.5 Without prejudice to the Customer's right subsequently to enforce its remedies pursuant to this Agreement, the Customer hereby agrees to afford the Supplier not less than thirty (30) days in which to remedy any Event of Default before making any claim in respect of such Event of Default.
- 12.6 Subject to clause 12.2, the Supplier shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served written notice of the same upon the Supplier within two years of the date it became aware of the circumstances giving rise to the Event of Default, or the date when it ought reasonably to have become so aware.
- 12.7 In the event that the Services (or any part thereof) are suspended or otherwise unavailable to the Customer for a continuous period in excess of twenty-four (24) hours, and the suspension and/or unavailability does not result from a Force Majeure Event, an act or omission of the Customer, or any suspension under clause 10.2, the Supplier will, if requested by the Customer in writing, pay to the Customer (as a credit against the Supplier's next invoice): (i) 5% of the Monthly Fee Equivalent for the affected Services for each period of twenty-four (24) hours for which the Services are suspended or unavailable, up to a maximum of 15%; and (ii) a reasonable proportion of any compensation it receives from any relevant Third Party Services Provider in respect of the period of suspension and/or unavailability. Subject to clause 12.2, the Supplier shall not be otherwise liable to compensate the Customer for any other loss, damage or expenses arising out of any suspension and/or unavailability of the Services.
- 12.8 The Customer acknowledges that the Charges are determined on the basis of the exclusions from and limitations of liability contained in this Agreement and acknowledges that the provisions of this clause 12 reflect a fair and equitable allocation of risk.
- 13. REPRESENTATIVES**
- 13.1 The Supplier and the Customer shall on or before the relevant Commencement Date each nominate and inform the other of the identity of a Representative who shall be authorised to make decisions relating to this Agreement and who shall be responsible for providing and/or allowing access to all information and documentation to which the Supplier or the Customer (as the case may be) and/or their agents, sub-contractors or professional advisors are entitled pursuant to this Agreement (subject to the provisions in respect of confidentiality set out in clause 18). The Customer shall notify its Representative of the Service Administration Password.
- 13.2 The Supplier and the Customer shall on or before the relevant Commencement Date each nominate and inform the other of the identity of a Second Representative and a Third Representative who shall be involved in the resolution of Disputes in accordance with clause 27.1.
- 13.3 Each Party shall inform the other in writing of any change in the identity of its Representative, Second Representative and/or Third Representative during the Term.
- 14. INTELLECTUAL PROPERTY RIGHTS**
- 14.1 Nothing in this Agreement shall operate to transfer to the Customer any right, title or interest in or to, or to grant to the Customer any licence or other right to use, any of the Intellectual Property Rights owned and/or licensed by the Supplier and/or any Third Party Services Provider, save that the Supplier hereby grants (or shall procure that the relevant Third Party Services Provider grants) to the Customer a licence, for the Term to use such rights that exist in respect of the Services solely to the extent necessary to use the Services for the purpose for which they are supplied.
- 14.2 Where the Supplier provides any software to the Customer as a part of the Services, such software shall be provided on the licence terms accompanying or contained in such software or otherwise notified by the Supplier to the Customer, and the Customer shall act in accordance with those terms.
- 14.3 If a claim or action is made or brought against the Customer by any third party that the use by the Customer of the Services for the purposes for which they were supplied infringes the Intellectual Property Rights of that third party, and that claim is accepted by the courts of England and Wales, the Supplier shall, if requested to do so by the Customer and at the Supplier's option and expense, either:
- 14.3.1 obtain for the Customer the right to continue using the Services for the purpose for which they were supplied free from any liability for such infringement;
- 14.3.2 modify, substitute or replace any Services supplied to the Customer by the Supplier thereafter so as to avoid the infringement, without adversely affecting or limiting the specification or functionality of the Services; or
- 14.3.3 terminate that part of the Services which the Customer is unable to use as a result of the claim or action and refund to the Customer the Charges paid in respect of those Services since the date of the relevant claim or action.
- 14.4 Without prejudice to clause 14.3, if the Customer becomes aware of any actual or potential claim

- that the provision of the Services by the Supplier pursuant to this Agreement and/or the use of the Services by the Customer infringes any Intellectual Property Rights of any third party, the Customer shall:
- 14.4.1 promptly give the Supplier written notice of the claim or action and, subject to clause 14.5.3, consult with the Supplier and comply with the Supplier's instructions in connection with all aspects of the claim or action, including any settlement, compromise or defence;
  - 14.4.2 without prejudice to clauses 14.5.1 and 14.5.3, not make any admission of liability or agree to any settlement or compromise of the claim or action without the prior written consent of the Supplier; and
  - 14.4.3 at the request and cost of the Supplier, permit the Supplier to have conduct of the claim or action, and provide all such assistance as the Supplier may require in connection with it.
- 14.5 Clause 14.3 shall not apply to the extent that any claim or action is caused or exacerbated by:
- 14.5.1 any modification to the Services made by any person other than the Supplier;
  - 14.5.2 any breach of this Agreement by the Customer; or
  - 14.5.3 any use of the Services which is made after commencement of the claim or action or (if earlier) during the period between the Customer becoming aware of the alleged infringement and notifying the Supplier in accordance with clause 14.4.1.
- 14.6 The Customer shall procure all necessary approvals, licences, consents and other rights for the Supplier to use the Customer Materials. The Customer hereby grants to the Supplier, with the right to sub-licence, a non-exclusive, royalty free licence during the Term to use the Customer Materials solely in connection with the provision of the Services.
- 14.7 The Customer agrees that the Supplier may refer to the Customer as a customer of the Supplier in any of the Supplier's marketing materials or on the Supplier's website. The Customer hereby grants the Supplier a licence to use any of the Customer's trade names and trade marks solely in connection with such marketing. The Supplier shall comply with any trade mark usage guidelines in respect of such trade marks notified to the Supplier by the Customer in writing.
- 14.8 The Customer consents to the Supplier contacting it by any means (including, without limitation, by telephone, email, SMS or post) with information about goods and services which the Supplier believes may be of interest to the Customer.
- 15. TERMINATION**
- 15.1 This Agreement may be terminated by notice in writing by either Party (to have immediate effect):
- 15.1.1 if the other commits any material breach of any term of this Agreement and if (in the case of a breach capable of being remedied) it shall not have been remedied within thirty (30) days of a written request by the other Party to remedy the same;
  - 15.1.2 if the other:
    - 15.1.2.1 becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, has a receiver, manager or administrative receiver appointed over its assets, undertakings or income, has passed a resolution for its winding-up, or has a petition presented to any Court for its winding-up, has an administrator appointed in respect of it or is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person, commits any act of bankruptcy or if any petition or receiving order in bankruptcy is presented or made against that other Party (each an "**Insolvency Event**"); or
    - 15.1.2.2 ceases or threatens to cease to trade; or
  - 15.1.3 in the circumstances set out in clause 19.3.
- 15.2 For the purposes of **clause 15.1.1**, a breach shall be considered capable of remedy if the Party in breach can comply with the provisions in question in all respects other than as to the time of performance.
- 15.3 Without prejudice to the generality of clause **15.1.1**, the Supplier shall be entitled to terminate the whole or part of this Agreement with immediate effect by notice in writing by the Supplier to the Customer without liability for the Supplier:
- 15.3.1 if any invoice rendered to the Customer remains wholly or partly unpaid for more than thirty (30) days after the same became due, unless there is a bona fide dispute in respect of the unpaid sum which has been notified to the Supplier in accordance with clause 8.11;
  - 15.3.2 if the Customer breaches the Acceptable Use Policy or otherwise uses the Services in any way which materially impairs the ability of the Supplier to provide services to its other customers; or
  - 15.3.3 in the circumstances set out in clauses 6.6, 8.7 and 14.3.3.

- 15.4 The Customer may terminate the Agreement by giving at least ninety (90) days' notice to the Supplier through MyTimico with a copy by email to [cancellation@timico.co.uk](mailto:cancellation@timico.co.uk) provided that such notice is given in accordance with any applicable Supplier cancellation policy.
- 15.5 The Supplier may terminate the Agreement at any time for convenience following the Initial Term by giving at least six (6) months' notice to the Customer in writing.
- 15.6 The rights to terminate this Agreement given by this clause shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 15.7 In the event that either Party is the subject of an Insolvency Event, the Party subject to the Insolvency Event will inform the other Party immediately and the Parties will discuss options with the aim of avoiding any interruption of the Services.
- 16. EFFECT OF TERMINATION**
- 16.1 Any termination of this Agreement for any reason shall not affect any accrued rights or liabilities of either Party, nor the coming into force, or the continuance in force, of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 16.2 Upon the termination of this Agreement for whatever reason:
- 16.2.1 subject to clause 16.3, immediately following the Termination Date both Parties shall promptly:
- 16.2.1.1 deliver up to the other all property of the other Party in its possession or control; and
- 16.2.1.2 either deliver up to the other Party or (where delivery is not feasible) destroy any Confidential Information of the other Party in its possession or control,
- and, for the purposes of this clause 16.2.1, references to the property of the Supplier and to the Confidential Information of the Supplier shall include (as applicable) any property and Confidential Information of any Third Party Services Provider, and the Customer's obligation to deliver such property and Confidential Information (as applicable) pursuant to this clause 16.2.1 shall be to deliver the same to the relevant Third Party Services Provider;
- 16.2.2 within twenty eight (28) days after the Termination Date both Parties shall certify in writing to the other that they have fully complied with their obligations under clause 16.2.1;
- 16.2.3 the Customer shall comply with all Services Specific Customer Obligations regarding termination;
- 16.2.4 all outstanding Charges (which for the avoidance of doubt shall include any Charges for Services consumed but not yet paid for) and any Fees to be paid by the Customer to the Supplier shall become immediately due and payable; and
- 16.2.5 the Supplier shall repay to the Customer any Charges paid by the Customer in advance insofar as such Charges relate to the provision of Services during the period following the Termination Date and provided that no Termination Fee is payable or would be payable taking into account such repayment.
- 16.3 Upon issue of a termination notice by the Supplier in accordance with clause 8.7 but prior to the relevant Termination Date, the Supplier shall have the right at its discretion to assign, novate or otherwise transfer this Agreement to the relevant Third Party Services Provider or any other service provider that the Third Party Services Provider may require. In the event of assignment, novation or transfer in accordance with this clause 16.3:
- 16.3.1 the Supplier shall incur no further liability to the Customer under this Agreement and all further monies due from the Customer to the Supplier under the Agreement will be payable to the assignee; and
- 16.3.2 the Customer undertakes, at the request of the Supplier, to promptly do all acts and execute all documents which may be necessary to give effect to the assignment, novation or transfer.
- 16.4 Upon termination of this Agreement by the Supplier in accordance with clauses 15.1.1, 15.1.2 or 15.3, or the Customer in accordance with clause 15.4, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier the Termination Fee (if any) in relation to each terminated Service.
- 17. EXIT ASSISTANCE**
- 17.1 The Customer may, at any time before termination of this Agreement, request the Supplier to provide reasonable assistance in transitioning the Services to the Customer or any replacement service provider, including deletion of Customer data from any Supplier Equipment (the "Exit Assistance").
- 17.2 The Supplier shall provide such Exit Assistance for a maximum period of three months (the "Exit Assistance Period").
- 17.3 Where the provision of any Exit Assistance extends beyond the Term, the Parties agree that the terms of this Agreement shall continue in

- force for the duration of the Exit Assistance Period.
- 17.4 The Supplier shall be entitled to charge the Customer for any Exit Assistance. Unless otherwise agreed in writing, such Charges shall be in accordance with the Supplier's day rates applicable to Services provided on a time and materials basis as set out in the Supplier's Standard Charges Document, together with Charges for all Supplier costs relating to the provision of any Exit Assistance, including the cost of obtaining and/or renewing any software licences.
- 17.5 The Supplier shall, on request by the Customer at any time following the first anniversary of the relevant Commencement Date, prepare and provide to the Customer an exit plan setting out the key activities, deliverables and dependencies involved in transition of the Services to a replacement supplier. The Supplier shall then perform any Exit Assistance in accordance with such exit plan.
- 18. CONFIDENTIALITY**
- 18.1 Each Party undertakes:
- 18.1.1 to keep confidential all information (written or oral) concerning the business and affairs of the other Party including all information relating to the trade, business, activities, trade secrets, know-how, finances, processes, drawings, specifications, methods, designs, formulae, software and technology of the other Party and any of its personnel, customers or suppliers, and all Intellectual Property Rights, personal data and data of the other Party and any of its personnel, customers or suppliers (the "**Confidential Information**");
- 18.1.2 not without the other Party's written consent to disclose the other Party's Confidential Information in whole or in part to any other person, save those of its employees, agents and sub-contractors involved in the provision or receipt of the Services to the extent that they need to know the same for the purposes of this Agreement; and
- 18.1.3 to use the other Party's Confidential Information solely in connection with the provision or receipt of the Services and not for its own benefit or the benefit of any third party.
- 18.2 The provisions of clause 18.1 shall not apply to the whole or any part of the Confidential Information to the extent that it is:
- 18.2.1 already in the other Party's possession on the date of its disclosure without breach of any obligation of confidentiality;
- 18.2.2 in the public domain other than as a result of a breach of this clause; or
- 18.2.3 independently developed by the other Party without reference to or use of the Confidential Information.
- 18.3 Either Party may disclose the Confidential Information of the other Party to the extent that it is required to be disclosed pursuant to any Applicable Law or under a public telecommunications operator licence.
- 18.4 Each Party undertakes to make all its relevant employees, agents and sub-contractors aware of the confidentiality of the Confidential Information and the provisions of this **clause 18**, and, without limitation to the foregoing, to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this **clause 18**.
- 19. FORCE MAJEURE**
- 19.1 Neither Party shall be deemed to be in breach of this Agreement or otherwise liable to the other in any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to a Force Majeure Event.
- 19.2 If a Party's performance of its obligations under this Agreement is affected by a Force Majeure Event, then:
- 19.2.1 it shall give written notice to the other Party, specifying the nature and extent of the Force Majeure Event, immediately on becoming aware of the Force Majeure Event and will at all times use all reasonable endeavours to mitigate the severity of the Force Majeure Event;
- 19.2.2 subject to the provisions of **clause 19.3**, the date for performance of such obligations shall be deemed suspended but only for a period equal to the delay caused by the Force Majeure Event; and
- 19.2.3 it shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure Event.
- 19.3 If the Force Majeure Event in question prevails for a continuous period in excess of one month after the date on which notification of the Force Majeure Event is given under clause 19.2.1, the non-affected Party shall then be entitled to give notice in writing of no less than 15 days to the other Party to terminate this Agreement.
- 20. WAIVER**
- 20.1 A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed on behalf of the Party who is waiving the breach or provision.

- 20.2 Any failure or delay by the Supplier in exercising any right, power or remedy under this Agreement shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by the Supplier of any other right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it, or the exercise of any other right, power or remedy.
- 20.3 Save as otherwise expressly provided in this Agreement the rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.
- 20.4 Any waiver of a breach of, or default under, any of the terms of this Agreement shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.
- 21. NOTICES**
- 21.1 Any demand, notice or communication to be sent by one Party to the other in connection with this Agreement, except for the service of Court proceedings, shall be in writing and shall, unless expressly set out otherwise in this Agreement, be sent by e-mail to the address of the other Party as set out in the Order Form or this Agreement as applicable and shall be deemed to have been duly given when transmitted provided that the e-mail is not returned as being undeliverable.
- 21.2 Where a specific email address for giving notice to the Supplier is stated in this Agreement, the relevant notice shall only be validly given by the Customer if sent to the specific email address set out in this Agreement.
- 22. INVALIDITY AND SEVERABILITY**
- 22.1 If any part of this Agreement is held by any court or other competent authority to be void, invalid or unenforceable in whole or part:
- 22.1.1 this shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement; and
- 22.1.2 the Parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision, to the extent that such spirit and intention is consistent with the laws of England and Wales, and so that the amended clause complies with the laws of England and Wales.
- 23. ENTIRE AGREEMENT**
- 23.1 This Agreement together with the documents referred in and attached to it contains all the terms which the Parties have agreed in relation to the subject matter of this Agreement and supersedes, cancels and nullifies any previous Agreement between the Parties in relation to such matters.
- 23.2 Neither of the Parties have been induced to enter into this Agreement by a statement or promise that this Agreement does not contain and shall have no remedy in respect of any statement, representation, warranty or undertaking (whether negligent or innocently made) other than as expressly set out in this Agreement.
- 23.3 Save as otherwise agreed in writing by the Parties or as expressly set out in this Agreement, all specifications, descriptive material, written or oral representations made by the Supplier and all warranties and conditions relating to the Services, whether express or implied by law, shall to the extent permitted by law, be excluded.
- 23.4 Nothing within this clause 23 shall exclude any liability that a Party would otherwise have to the other Party in respect of any statement made fraudulently by that Party prior to the date of this Agreement.
- 24. SUCCESSORS**
- 24.1 This Agreement shall be binding upon and enure for the benefit of the successors in title of the Parties.
- 25. ASSIGNMENT AND SUB-CONTRACTING**
- 25.1 The Supplier shall be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under this Agreement.
- 25.2 The Customer shall not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights or obligations under this Agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- 25.3 The Supplier shall be entitled to sub-contract any of its obligations under this Agreement. Any sub-contracting shall not relieve the Supplier from its liabilities to the Customer under this Agreement. The Supplier may change its sub-contractor(s) from time to time provided that any such change shall not adversely impact on the delivery of the Services.
- 26. NO PARTNERSHIP, JOINT VENTURE OR AGENCY**
- 26.1 Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture between the Parties or is intended to, or shall, operate to create a partnership or joint venture between the Customer and the Supplier, authorise either Party to act as agent for the other Party or authorise either Party to act in the



name or on behalf of, or otherwise to bind, the other Party in any way.

## 27. DISPUTES

- 27.1 Any dispute or difference (a “**Dispute**”) arising between the Customer and the Supplier in respect of or arising out of this Agreement shall be dealt with in accordance with this clause 27.
- 27.2 In the first instance, the Representatives shall each use their reasonable endeavours to resolve the Dispute. If the Dispute cannot be resolved by the Representatives within ten (10) Business Days of the Dispute arising, it shall be escalated first to the Second Representatives and then, if necessary, to the Third Representatives, who shall each have ten (10) Business Days to resolve the same, failing which it will be escalated to the next level.
- 27.3 If the escalation process does not lead to resolution of the Dispute, then, in respect of any Dispute of a technical nature, either Party may refer the same to such independent third party (the “**Independent Third Party**”) as the Supplier and the Customer shall jointly nominate. If the Supplier and the Customer shall fail to nominate an Independent Third Party within ten (10) Business Days of the end of the escalation process in clause 27.2, then the Independent Third Party shall be nominated at the request of either the Supplier or the Customer by the President for the time being of BCS, The Chartered Institute for IT or its successor or equivalent body.
- 27.4 The Parties shall use their reasonable endeavours to procure that the Independent Third Party shall reach a decision within thirty (30) Business Days of his nomination and shall provide all necessary co-operation and information to the Independent Third Party to achieve this.
- 27.5 The Independent Third Party shall act as an expert and not as an arbitrator whose decision (including as to costs) shall, except in the case of manifest error, be final and binding upon the Supplier and the Customer.
- 27.6 Disputes of a non-technical nature that cannot be resolved by the Parties pursuant to the provisions of **clauses 27.1 and 27.2** shall be subject to **clause 32**.

## 28. NON-SOLICITATION

- 28.1 Neither Party shall during the Term and for a period of twelve months after the Termination Date, solicit the other Party’s staff who have been employed or engaged in the provision or receipt of the Services or in the performance of this Agreement at any time during the previous twelve months. For the purposes of this clause, “solicit” means the soliciting of such person, or endeavouring to entice them away from the

other Party, with a view to engaging such person as an employee, director, sub-contractor or independent contractor.

- 28.2 In the event that either Party is in breach of **clause 28.1**, the Party in breach shall pay to the other by way of liquidated damages an amount equal to fifty (50) per cent of the gross annual salary (as at the time of the breach) of the person so employed or engaged. This provision shall be without prejudice to either Party’s ability to seek injunctive relief.
- 28.3 The Parties hereby acknowledge and agree that the formula specified in **clause 28.2** is a reasonable estimation of the loss which would be incurred by the loss of the person so employed or engaged.

## 29. INDEMNITY - CONDUCT OF CLAIMS

- 29.1 The Customer will indemnify, keep indemnified and hold harmless the Supplier from and against all costs (including the costs of enforcement), expenses, liabilities, losses, injuries, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the Supplier incurs or suffers in respect of:
- 29.1.1 a direct or indirect breach of the terms of this Agreement or negligent performance or failure in performance by the Customer of its obligations under this Agreement;
- 29.1.2 any use or misuse of the Services by the Customer; and/or
- 29.1.3 any breach of the Applicable Laws by the Customer,
- and for the purposes of this clause 29.1, “**Customer**” shall include the employees and other representatives of the Customer.
- 29.2 The indemnity in clause 29.1 shall not apply to the extent that the relevant liability has arisen as a result of the breach by the Supplier of any of its obligations under this Agreement.
- 29.3 In respect of any claim for indemnity arising under this Agreement, the Party seeking to rely on the indemnity (the “**Indemnified Party**”) shall:
- 29.3.1 as soon as possible give to the other (the “**Indemnifying Party**”) written notice of the claim, circumstance or matter against which the Indemnified Party is claiming to be indemnified, and all details of the claim from time to time in the knowledge or possession of the Indemnified Party; and
- 29.3.2 where the claim relates to a claim by any third party against the Indemnified Party, not, without the prior written consent of the Indemnifying Party (which shall not be unreasonably withheld

- or delayed), admit liability or make any offer, promise, compromise, settlement or communication with the third party in respect of the claim; and
- 29.3.3 where the claim relates to a claim by any third party against the Indemnified Party, at the request of the Indemnifying Party and conditional on the Indemnifying Party providing to the reasonable satisfaction of the Indemnified Party security for all costs, charges and expenses, surrender to the Indemnifying Party or its insurers, on request, the conduct, in the name of the Indemnified Party, of the defence, settlement and/or counterclaim of the third party's claim (provided that the Indemnified Party shall be kept fully informed as to the conduct of such defence, settlement and/or counterclaim).
- 30. DATA PROTECTION**
- 30.1 In this clause 30:
- 30.1.1 **"Data Protection Legislation"** shall mean the Data Protection Act 2018 as amended from time to time, the Regulation of Investigatory Powers Act 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) as amended or superseded and the General Data Protection Regulation (EU) 2016/679 ("**GDPR**") (as applicable) and any other laws relating to the protection of personal data and the privacy of individuals;
- 30.1.2 **"Data Subject"**, **"Processor"**, **"Processing"** and **"Personal Data"** have the meaning set out in the Data Protection Legislation in relation to data that is Processed under this Agreement; and
- 30.1.3 **"Data Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed.
- 30.1.4 **"Third Party Services Provider List"** means the list of Third Party Services Providers maintained on the Supplier's website.
- 30.2 The Parties acknowledge that the Supplier is a Processor acting on behalf of the Customer and that, for the purposes of this Agreement:
- 30.2.1 the type of Personal Data and categories of Data Subjects are as described in the Order Form;
- 30.2.2 the nature/purpose of the Processing is to enable the Supplier to provide the Services (which form the subject matter of the Processing) and the duration of the Processing shall be the Service Term; and
- 30.2.3 the Supplier will from time to time engage third parties, including Third Party Services Providers, to carry out its Processing obligations under this Agreement;
- 30.2.4 under its contracts with Third Party Services Providers, the Supplier may be required to pass details of individual customers to whom it provides the relevant Third Party Services to the Third Party Services Provider. The Customer gives consent to the Supplier to transfer the Personal Data to a Third Party Services Provider where this is reasonably required for the Supplier to fulfil its contractual obligations to that Third Party Services Provider;
- 30.2.5 the Customer authorises the Supplier to use the Third Party Service Providers as set out on the Third Party Service Provider List; and
- 30.2.6 subject to clause 30.2.3, the Customer authorises the Supplier to transfer personal data outside the European Economic Area.
- 30.3 The Supplier shall comply with its obligations under the Data Protection Legislation and shall, in particular:
- 30.3.1 process the Personal Data only to the extent necessary for the purpose of providing the Services and in accordance with any written instructions from the Customer and this clause 30 and for no other purpose save to the extent required by law;
- 30.3.2 implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
- 30.3.3 not transfer the Personal Data outside of the European Economic Area without the existence of an adequacy decision by the Commission or adequate safeguards in place in compliance with the GDPR;
- 30.3.4 ensure that any employees or other persons authorised to Process the Personal Data are subject to appropriate obligations of confidentiality;
- 30.3.5 not engage any third party other than a Third Party Services Provider as set out in the Third Party Services Provider List to carry out its Processing obligations under this Agreement without notifying the Customer and procuring by way of a written contract that such third party will, at all times during the engagement, be subject to Processing obligations equivalent to those set out in this clause 30. The Supplier shall remain liable to the Customer for the performance of the Third Party Services Provider's obligations;

- 30.3.6 notify the Customer of any intended changes concerning the addition or replacement of Third Party Service Providers on the Third Party Service Provider List, such notification shall be by notifying the Customer of a change to the Third Party Services Providers List (“**Change Notification**”) and it shall be the responsibility of the Customer to check that list for details of the change. If the Customer objects to the change then they must inform the Supplier’s Representative within 14 days of the Change Notification. If the parties cannot resolve the objection then the Supplier shall have the right to terminate this Agreement;
- 30.3.7 notify the Customer, as soon as reasonably practicable, about any request or complaint received from Data Subjects without responding to that request (unless authorised to do so by the Customer) (subject to Clause 30.4) and assist the Customer by technical and organisational measures, insofar as possible, for the fulfilment of the Customer’s obligations in respect of such requests and complaints;
- 30.3.8 maintain complete and accurate records of information as required by Data Protection Legislation;
- 30.3.9 notify the Customer promptly on becoming aware of a Data Breach in respect of Personal Data of which the Supplier is aware that it processes on behalf of the Customer;
- 30.3.10 promptly inform the Customer if, in its opinion, an instruction infringes Data Protection Legislation;
- 30.3.11 on request by the Customer (subject to Clause 30.4) and taking into account the nature of the Processing and the information available to the Supplier, assist Customer in ensuring compliance with its obligations under the GDPR (where applicable) with respect to:
- 30.3.11.1 implementing appropriate technical and organisational measures in accordance with Article 32;
- 30.3.11.2 where relevant, notifying a Data Breach to the Information Commissioner’s Office (or any replacement body) and/or communicating such breaches to the Data Subject in accordance with Articles 33 and 34;
- 30.3.11.3 where necessary, carrying out and/or reviewing and, if applicable, consulting with the Information Commissioner’s Office (or any replacement body) with respect to data protection impact assessments in accordance with Articles 35 and 36;
- 30.3.12 on reasonable request by the Customer, make available all information necessary to demonstrate the Supplier’s compliance with this clause 30 and otherwise permit, and contribute to, audits carried out by the Customer (or its authorised representative); and
- 30.3.13 on termination or expiry of this Agreement, destroy or return (as the Customer directs) all Personal Data in its power, possession or control and delete all existing copies of such data except to the extent the Supplier is required to retain a copy the Personal Data by law.
- 30.4 The Supplier reserves the right to charge the Customer in respect of its reasonable costs incurred under any of its obligations under this clause 30 in relation to complying with any request made by the Customer, a Data Subject or the Information Commissioner or any Court order.
- 31. BRIBERY AND CORRUPTION**
- 31.1 Each party shall comply with all applicable laws, statutes and regulations, relating to anti-bribery and anti-corruption including the Bribery Act 2010 and shall not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.
- 31.2 Each party shall have and shall maintain in place throughout the Term its own anti-bribery policies and procedures, including adequate procedures under the Bribery Act 2010, and will enforce them where appropriate.
- 32. LAW**
- 32.1 The formation, construction, performance, validity and all aspects whatsoever of this Agreement and any contractual or non-contractual disputes or claims arising from it or its subject matter shall be governed by the laws of England and Wales and the Parties hereby agree to submit to the exclusive jurisdiction of the English courts.
- 33. COUNTERPARTS**
- 33.1 This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but which shall together constitute one agreement.
- 34. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**
- 34.1 The Parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.