

# MASTER SERVICES AGREEMENT

## AGREED TERMS

### 1. Interpretation

1.1 The definitions and rules of interpretation in this Clause 1 apply in this Agreement.

**Acceptable Use Policy:** means the policy as set out [on Core's website](#) which may be updated by Core from time to time.

**Acceptance Criteria:** means the acceptance criteria as specified in Clause 9.2 or referred to in a Scope of Works or as otherwise agreed by the Parties expressly in writing after the date of the Scope of Works against which the Acceptance Tests are to be carried out to determine whether the Deliverables meet the Scope of Works, are satisfactory and ready to be invoiced.

**Acceptance Tests:** the acceptance tests as specified or referred to in the Scope of Works to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

**Agreement:** means the terms and conditions in this agreement along with the Scope of Works.

**Applicable Data Protection Laws: means:**

- a) To the extent the UK Data Protection Legislation applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Core is subject, which relates to the protection of personal data.

**Applicable Laws: means:**

- a) To the extent the UK Data Protection Legislation applies, the law of the United Kingdom or of a part of the United Kingdom.
- b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which Core is subject.

**Background Materials:** means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software,



documentation, and data of whatever nature and in whatever media) owned, developed or controlled by Core which may have been created outside the scope, or independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

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

**Business Systems:** the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Customers or any of its agents or contractors.

**Change Request:** means any request to alter the Services pursuant to this Agreement as set out in Clause 14.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its Representatives) to the other Party and that Party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Commencement Date:** means the date of this Agreement.

**Commissioner:** The Information Commissioner (see section 114, DPA 2018).

**Core:** means Core Technology Systems (UK) Ltd incorporated and registered in England and Wales with company number 2502866 whose registered office is at 9th Floor, 9 Appold Street, London, EC2A 2AP.

**Core's System:** the system to be used by Core in performing the Managed Services, including the Hardware, any Third-Party Software, the Customer-side Equipment and communications links between the Hardware and the Customer-side Equipment and the Customer's Operating Environment.

**Customer:** means the entity described in the Proposal, the Scope of Works or the Order.

**CSP Customer Agreement:** the CSP customer agreement, which is a direct agreement between the Customer and Microsoft and is a condition of Cloud Solution Provider Program that the Customer enters into this Agreement, the terms of which are found at <https://www.microsoft.com/licensing/docs/customeragreement> and which may be updated from time to time.

**Customer Data:** any information that is provided by the Customer to Core as part of the Customer's use of the Services, including any information derived from such information.



**Customer Personal Data:** any personal data which Core processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

**Customer Site:** any premises used by the Customer at which it receives the Services.

**Customer's Operating Environment:** the Customer's computing environment (consisting of hardware and software) that is to be used by the Customer in connection with its use of the Managed Services and which interfaces with Core's System in order for the Customer to receive the Managed Services, but excluding the Customer-side Equipment.

**Customer-side Equipment:** any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by Core as part of the Services.

**Deliverable:** means all Documents, products and materials developed by Core or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**Document:** means, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Dispute Resolution Procedure:** the procedure described in Clause 28.

**EU GDPR:** The General Data Protection Regulation ((EU) 2016/679).

**Fees:** the fees payable to Core, as more fully set out in the applicable Scope of Works.

**Force Majeure:** any cause preventing either Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, riot, civil commotion, pandemics, epidemics, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lock out of the Party's own staff shall not entitle them to claim that to be a force majeure event.

**Good Industry Practice:** the standards that fall within the upper quartile of a skilled and experienced provider of business-critical managed services similar or identical to the Services, having regard to factors such as the nature and size of the Parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

**Goods:** the goods to be provided as part of the Services (or any part of them), as set out in the Scope of Works in the relevant section or as otherwise agreed in writing between the Parties.

**Hardware:** all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories)



provided and used by Core to deliver the Managed Services to the Customer.

**Initial Term:** as set out in the relevant Scope of Works.

**Intellectual Property Rights or IPR:** any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including the Software, patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of Customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.

**IPR Claim:** means a claim arising from the infringement of IPR belonging to third parties.

**Issues List:** means a written list of the non-conformities to the Acceptance Criteria for a specific Deliverable.

**Managed Services:** the support service described in the Scope of Works (including any support arrangements) to be performed by Core in accordance with this Agreement.

**Normal Business Hours:** 9.00 am to 5.30 pm local UK time on Business Days.

**Order:** means the Customer's written request or purchase order or otherwise in relation to Core's Proposal or Quotation for the supply of the Services.

**Party:** a party to this Agreement or parties.

**Professional Services:** the service described in the Scope of Works to be performed by Core in accordance with this Agreement.

**Proposal:** means the document issued by Core setting out the proposed Services and the proposed Fees.

**Purpose:** the purposes for which the Customer Personal Data is processed, as set out in Schedule 1.

**PVF or Project Variation Form:** means the document issued by Core which allows changes to the Scope of Works or this Agreement to take effect.



**Relief Events: the following events:**

- (a) any failure by the Customer to comply with its obligations under this Agreement;
- (b) any error or malfunction in the Business Systems or any other software, hardware or systems for which Core is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which Core is not responsible; or
- (c) any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to Core which is reasonably required by Core for the proper performance of its obligations under this Agreement.

**Representative:** means the person nominated by each Party in accordance with this Agreement.

**Service Level Arrangements:** the service level arrangements set out in the Scope of Works.

**Services:** means the use of the Software, Goods, Managed Services and the Professional Services including consulting, advisory, integration or technical services performed by Core under a Scope of Works or otherwise further to the signed written agreement between the Parties.

**Scope of Works:** the specification for either the Software, Goods, Professional Services and/or the Managed Services as set out under separate cover.

**Software:** Aurora software which is owned by Core and used by the Customer during the Term of this Agreement only if expressly set out in the relevant Scope of Works. In the event the Software does not form part of the Scope of Works, the terms related to such Software shall not be applicable.

**Subsequent Term:** means twelve (12) months commencing on the last day of the Initial Term or previous Subsequent Term.

**Third Party Software:** any code or software programs written or provided by Microsoft® or other third parties which are used by the Customer during the provision of the Services.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.



**UK GDPR:** the EU GDPR as it applies in the UK after the end of the transition period (as set out in Article 126 of the EU-UK Withdrawal Agreement) by virtue of section 3 of the European Union (Withdrawal) Act 2018.

- 1.2 Clause, Schedules and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 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.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to writing or written includes e-mail.
- 1.10 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.11 References to Clauses are to the Clauses of this Agreement and the Schedule.
- 1.12 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 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 In the event of any conflict or inconsistency between the Clauses and the Scope of Works (including any changes to the Scope of Works), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
- (a) the Scope of Works;
  - (b) the Clauses.

## 2. Provision of Services

- 2.1 The Agreement sets out the terms and conditions under which Core shall provide to the Customer the Services.
- 2.2 The Agreement shall (i) be in substitution for any prior oral or other prior arrangements between Core and the Customer in connection with the purchase of the relevant Services; and (ii) prevail over any of the Customer's inconsistent terms and conditions contained in, or referenced in, any order confirmation or other acknowledgement, quotation, purchase order(s), delivery note, invoice or similar document or implied by law, trade custom or practice.
- 2.3 No addition to, variation of or other amendment or purported amendment to any Scope of Works or this Agreement shall be binding on the Parties unless expressly stated as such, made in writing and signed by or acknowledged by a duly authorised Representative of both Parties.
- 2.4 Any Proposal given by Core is for budgetary purposes until financial and technical validation and shall not constitute an offer. It is only valid for a period of fifteen (15) Business Days and shall only become binding upon either the earlier of (1) Core acknowledging the Order in writing; or (2) the signing of a Scope of Works.
- 2.5 Core shall not be under any obligation to perform and the Customer shall not be under any obligation to accept any Services unless and until a Scope of Works has been executed.
- 2.6 Each Scope of Works shall incorporate the terms of this Agreement and shall form an independently terminable contractual obligation. Each Scope of Works (together with this Agreement and any documents referred to therein) shall constitute the entire agreement and understanding between the Parties in relation to the relevant Services provided under that Scope of Works and shall supersede and terminate all prior agreements, undertakings and arrangements (both oral and written) relating to the subject matter of the relevant Scope of Works.



- 2.7 Each Scope of Works for Services concluded between the Parties shall set out the Services to be performed by Core including any Deliverables.
- 2.8 The Scope of Works may be issued at any time as a separate document or incorporated into a Proposal.

### **3. Managed Services**

- 3.1. Core will provide the Managed Services with all due care, skill and ability during the term of the Agreement unless earlier terminated for any reason.
- 3.2. Core shall provide the Managed Services in accordance with the Service Level Arrangements as stated in the Scope of Works.
- 3.3. The Customer shall adhere to the Acceptable Use Policy at all times.
- 3.4. The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties that Customer has authorised to use the Managed Services.
- 3.5. The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by Core in writing. This includes informing Core promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, Core will work with the Customer to alleviate the situation as quickly as possible. The Parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 3.6. The Customer shall not provide the Managed Services to third parties without the prior written consent of Core.
- 3.7. The Customer acknowledges that certain conditions outside of Core's control may adversely impact the ability of Core to perform functions of the Managed Services. Examples of such conditions are listed below:
  - (a) failure of Customer Hardware, software or operating system.;
  - (b) any upgrades to Third Party Software which the Customer has not adhered to and does not use the latest upgrades. The Managed Services may either be limited or restricted depending on how many previous upgrades the Customer did not adhere to. For the avoidance of doubt, Core excludes any and all liability in relation to the Services in the event the Customer has not complied with any requirement to upgrade the Third-Party Software and the Managed Services fail as a consequence of this;





- (c) Network connectivity issues between Customer server and Core's monitoring platform;
- (d) Network connectivity issues including but not limited to downtime or maintenance time between Customer server and Microsoft's systems.

3.8. Core reserves the right to:

- (a) modify Core'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 Managed Service over its network,

provided that this has no adverse effect on Core's obligations or performance under this Agreement and its provision of the Managed Services or the Service Level Arrangements. If such changes will have an adverse effect, Core shall notify the Customer and the Parties shall follow the Change Request.

## 4. Goods

- 4.1. Any samples, drawings, descriptive matter or advertising produced by Core and any descriptions or illustrations contained in Core's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Agreement or have any contractual force.
- 4.2. To the extent that the Goods are to be manufactured in accordance with the relevant section of a Scope of Work supplied by the Customer, the Customer shall indemnify Core against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Core in connection with any claim made against Core for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Core's use of the Scope of Work. This Clause 4.2 shall survive termination of the Agreement.
- 4.3. Core reserves the right to amend the Scope of Work if required by any applicable statutory or regulatory requirements.
- 4.4. Core shall endeavour to deliver Goods to the agreed delivery location on the agreed delivery date.
- 4.5. If Core fails to deliver Goods by the relevant delivery date after being given a reasonable opportunity to remedy such delay, except to the extent that such delay is due to a third party for which Core shall have no liability, its liability shall be



limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Core shall have no liability for any failure to deliver Goods to the extent that such failure is caused by:

- (a) a delay from the manufacturer, third party supplier or other third party;
  - (b) a Force Majeure; or
  - (c) the Customer's failure to provide Core with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6. If ten (10) Business Days after the day on which Core attempted to make delivery of Goods the Customer has not taken delivery of those Goods, Core may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods, or charge the Customer for any shortfall below the price of the Goods.
- 4.7. Core may deliver Goods by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.
- 4.8. Substitute Goods may be supplied at Core's discretion providing such Goods are not materially different in both nature and/or quality. Core shall notify the Customer in any such event.
- 4.9. Subject to Clause 4.12, Core warrants that, for a period of as offered by the manufacturer (if any) ("Warranty Period"), the Goods shall conform with their description and comply with any applicable specification (but Core does not warrant the correctness or suitability of the Goods or of the specification provided by the manufacturer of the Goods to Core.
- 4.10. Subject to Clause 4.11 and Clause 4.12, if:
- (a) the Customer gives notice in writing to Core during the Warranty Period, within five (5) Business Days of discovery that some or all of the Goods do not comply with the warranties set out in Clause 4.9;
  - (b) Core is given a reasonable opportunity of examining such Goods; and
  - (c) the Customer (if asked to do so by Core) returns such Goods to either Core's place of business or another place of business, as determined by Core and at Core's cost,



Core shall, at its option, repair or replace any Goods that are found to be defective or refund the price of such defective Goods in full.

- 4.11. Core shall not be liable for the Goods' failure to comply with the warranties set out in Clause 4.9 if:
- (a) the Customer makes any further use of such Goods after giving notice of defects in accordance with Clause 4.10;
  - (b) the defect arises because the Customer failed to follow Core's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of Core following any drawing, design or Scope of Work supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of Core;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from the Scope of Work as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 4.12. Insofar as the Goods comprise or contain goods or components which were not manufactured or produced by Core, the Customer shall be entitled only to such warranty or other benefit as Core has received from the manufacturer and is permitted to pass onto the Customer.
- 4.13. Core's only liability to the Customer if the Goods fail to comply with the warranties set out in Clause 4.9 is as set out in this Clause 4.
- 4.14. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.
- 4.15. The terms of the Agreement shall apply to any repaired or replacement Goods supplied by Core.
- 4.16. Risk in Goods shall pass to the Customer on completion of unloading the Goods at the agreed delivery location.
- 4.17. Title to Goods shall only pass to the Customer once Core receives payment in full (in cash or cleared funds) for them.



- 4.18. Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Core's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (d) notify Core immediately if it becomes subject to any of the events listed in Clause 16.2(c); and
  - (e) give Core such information relating to the Goods as Core may require from time to time.
- 4.19. Core may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses Core, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in Clause 4.18, and to recover any Goods in which property has not passed to the Customer.

## 5. Responsibilities of Core

- 5.1. Core shall:
- (a) provide the Services in accordance with the terms of this Agreement and the Scope of Works;
  - (b) use its commercially reasonable endeavours to complete any Deliverables set out under any Scope of Works;
  - (c) commit sufficient resources to the provision of the Services to enable their delivery in accordance with the Agreement and Scope of Works;
  - (d) provide the Services with due care, skill and ability in accordance with Good Industry Practice;
  - (e) take such steps as may be required to fulfil its obligations under this Agreement and any Scope of Works;
  - (f) utilising suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care;



- (g) notify the Customer promptly if Core is unable to comply with any of the terms of this Agreement or any Scope of Works; and
  - (h) observe and ensure that its personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Sites and which have been communicated to it a week prior to the Services commencing, where Core is required to be on such Sites for the provision of the Services.
- 5.2. Core shall co-operate with the Customer in all matters relating to the Services and shall appoint a Representative (“Core Representative”), as the contact throughout the Services.
- 5.3. The Customer confirms that Core may employ sub-contractors without seeking the prior consent of the Customer. Notwithstanding the foregoing, Core shall at all times be responsible for and liable in respect of the performance of all obligations under this Agreement, whether such obligations are performed by Core itself, or any sub-contractor engaged by Core.
- 5.4. Core shall provide reasonable notice to the Customer of any change in its senior personnel engaged as part of the Project. Where relevant, Core shall replace any senior personnel who are removed with another appropriately skilled person.
- 5.5. Core does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Whilst Core will use commercially reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, Core cannot guarantee that such events will not occur. Accordingly, Core disclaims any and all liability resulting from or related to such events.
- 5.6. In relation to the Managed Services specifically and notwithstanding Core’s obligations under Clause 5.1, Core shall:
- (a) staff Core support desk with a team of skilled individuals (whether subcontracted or not);
  - (b) maintain a team skilled in the platform and with knowledge of the code developed to deliver the solution;
  - (c) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;
  - (d) undertake a regular account review, to discuss the Customer’s service needs and ensure that the Agreement is in alignment with its needs;



- (e) use commercially reasonable endeavours to follow the instructions of the Customer and will remain courteous during any communications with Customer personnel; and
  - (f) provide the Customer with reasonable co-operation in relation to this Agreement.
- 5.7. Core shall be under no obligation to provide the Managed Services to the Customer in the following circumstances;
- (a) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
  - (b) providing any other services not covered herein;
  - (c) training in use of any upgrades; and
  - (d) providing the Managed Services to the Customer where such support would have been unnecessary if the Customer had implemented update(s) and upgrade(s) supplied or offered to the Customer pursuant to the call for technical support.

## 6. Responsibilities of Customer

- 6.1. To the extent that Core requires access to the Customer Site to perform the Services, the Customer shall use reasonable endeavours to provide such access during normal business hours and to provide a suitable work environment to enable Core to perform such Services subject to Core complying with such internal policies and procedures of the Customer (including those relating to security and health and safety) as may be notified to Core in writing from time to time.
- 6.2. The Customer shall co-operate with Core in all matters relating to the Services and shall appoint a representative (“Customer Representative”) who shall have authority to commit the Customer on all matters relating to the relevant Project.
- 6.3. Customer shall;
- (a) co-operate with Core in all matters relating to the Services as reasonably requested by Core;
  - (b) adhere to the dates scheduled for provision of Services by Core to the Customer as stated in the applicable Scope of Works or otherwise agreed between the Parties in writing. Core requires twenty (20) Business Days written notice if the Customer wishes to cancel or amend any agreed dates. If the Customer fails to give such notice, Core may charge the Customer for the Services as set out in the Proposal, Order or Scope of Works and levy a further



fee for any amended date;

- (c) provide such access to the Customer's systems, software and platforms as may reasonably be requested by Core;
- (d) inform Core of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- (e) in respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution (POE) within seven (7) days of the date of issue by Microsoft. In the event that the Customer does not return the POE within the seven (7) days' notice period, Core may be entitled to charge the Customer the amounts directly and the Customer shall follow the payment terms in this Agreement;
- (f) Where a Microsoft Cloud service is deployed / utilised within the project (Azure, Enterprise Mobility Suite or Office365) Core will be assigned to the cloud subscription/s as the Digital Partner of Record and/or Claiming Partner of Record (as applicable) for a minimum of twelve (12) months from project completion date;
- (g) allow Core or its designated subcontractors and third parties, global admin access to the Customer's relevant servers and networking systems for the duration of the Agreement;
- (h) allow Core to publicise the work Core undertakes under this Agreement for the Customer including but not limited to case studies. For the avoidance of doubt, this shall include use of any and all logo's and trademark names;
- (i) provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;
- (j) provide all information and make available all resources as reasonably requested by Core in the execution of its obligations under this Agreement;
- (k) use all reasonable efforts to follow the reasonable instructions of Core support personnel with respect to the resolution of defects;
- (l) gather all relevant information prior to requesting assistance in respect of any defects including detailed defect description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a defect should be included such as network configuration details; and



- (m) provide Core with access to the Customer's production computer system via a secure broadband link operating at the industry accepted bandwidth for the purposes of remote diagnostics should such capability be required.
- 6.4. To the extent that Core requires access to the Customer's Operating Environment to perform the Managed Services, the Customer shall use reasonable endeavours to provide such access during Normal Business Hours and to provide a suitable work environment to enable Core to perform such Managed Services subject to Core complying with such internal policies and procedures of the Customer (including those relating to security and health and safety) as may be notified to Core in writing from time to time.
- 6.5. The Customer shall:
- (a) use the Services only for lawful purposes and in accordance with this Agreement;
  - (b) keep secure from third parties any passwords issued to the Customer by Core;
  - (c) fully virus-check all data supplied to Core pursuant to this Agreement;
  - (d) make Customer's Operating Environment and Customer-side Equipment, required to provide the Services, accessible to Core's support staff, enable logons or passwords required for such support staff (who will have their own logons);
  - (e) ensure that Core is able to access the systems needed to provide remote support, including but not limited to remote desktop access or screen sharing system;
  - (f) permit Core to install the current version of software required to provide the Managed Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
  - (g) provide notice of intention to change applicable Customer-side Equipment or Customer Operating Environment or data-feeds that will directly impact the Managed Services;
  - (h) gather all relevant information prior to requesting assistance including detailed fault description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a fault should be included such as network configuration details;
  - (i) comply with all applicable laws and regulations with respect to its activities under this Agreement, including those set out in Clause 20; and





- (j) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the Parties, Core may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.
- 6.6. In the event that the Customer is in breach of its obligations under the Agreement (including payment obligations) then Core shall provide written notice of such breach, specifying in detail the nature of the breach and providing thirty (30) Business Days' notice to remedy such breach if capable of remedy. If the Customer fails to remedy such breach Core shall be entitled to terminate or suspend the Services without prejudice to any pre-existing rights and obligations of either Party. Core shall have no liability or responsibility should the Services fail to comply with the Scope of Works and/or Service Level Arrangements as a direct result of the Customer (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.
- 6.7. Core shall procure any Third-Party Software required by the Customer for the provision of the Services. Core expressly excludes any warranty to the Customer that the Third-Party Software supplied or licensed under this Agreement will operate substantially in accordance with, and perform, the material functions and features as set out in the its marketing, sales or other associated documentations. The Customer shall remain liable for any and all payments owed to Core throughout this Agreement and until the end of the respective licence terms and shall adhere to any End User Licence Agreements sent by such third party in relation to the Third-Party Software.
- 6.8. The Customer agrees and acknowledges the terms of the CSP Customer Agreement. For the avoidance of doubt, in the event the CSP Customer Agreement is not applicable to the Services being received or delivered by Core to the Customer under this Agreement, such CSP Customer Agreement shall not apply.
- 6.9. If Core's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to Core on demand all reasonable costs, charges or losses sustained or incurred by it subject to Core confirming such costs, charges and losses to the Customer in writing.

## **7. Price and Payment**

- 7.1. The Customer shall pay the Fees for the Services (including any third-party services) as more fully set out in the relevant Scope of Works or as set out in this Agreement.



- 7.2. Clause 7.3 shall apply if the Services are to be provided on a time-and-materials basis. The remainder of this Clause 7 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.
- 7.3. Where the Services are provided on a time-and-materials basis:
- (a) Core’s standard hourly or daily rates are calculated on the basis of Normal Business Hours;
  - (b) Core shall be entitled to charge an overtime rate for time worked outside Normal Business Hours as set out in the Scope of Works;
  - (c) Core shall complete the relevant time recording systems to calculate the Fees for each invoice charged on a time and materials basis.
- 7.4. Core shall invoice the Fees in accordance with the payment intervals stated in the Scope of Works and for any Goods, Core shall invoice the Customer on or at any time after completion of delivery (or part delivery) installation or as otherwise stated in the Scope of Works.
- 7.5. The Fees exclude:
- (a) (unless otherwise agreed and set out in the Scope of Work), the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Core or its subcontractors in providing the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Customer for the Services (“Expenses”). Core shall obtain the Customer’s prior written approval before incurring any such expense, material or service exceeding a total cost of fifteen hundred pounds (£1,500) in the aggregate per day and shall be payable by the Customer in accordance with Clause 7.6; and
  - (b) unless otherwise set out in the Scope of Work, the costs of packaging, insurance and transport of the Goods.
- 7.6. The Customer shall pay each undisputed invoice for the Fees and Expenses in full and cleared funds (without deduction or set-off) within thirty (30) days of the date of such invoice unless otherwise agreed in writing by Core or unless otherwise set out in the Scope of Work. In the event the Customer pays by direct debit, the details of such direct debit payments shall be set out in the Scope of Work, as applicable. The Customer shall pay each undisputed invoice for the Fees in full and cleared funds (without deduction or set-off) by direct debit in advance unless otherwise agreed (Expenses shall be invoiced separately) of providing the Services or delivering the Goods, as applicable.



- 7.7. All payments by the Customer hereunder shall be in United Kingdom pound sterling unless otherwise agreed or set out in the Scope of Works and shall be paid to Core's bank account as advised by Core to the Customer in writing.
- 7.8. All amounts stated are gross amounts but exclusive of VAT or other sales tax which shall be paid by the Customer, if applicable, at the then prevailing rate subject to receipt of a valid VAT invoice or other sales tax invoice.
- 7.9. Should the Customer be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Fees payable shall be increased by the amount of such tax to ensure that Core receives a sum equal to the amount to be paid under the applicable Scope of Works.
- 7.10. Without prejudice to any other remedy that Core may have, if payment of the Fees or any part thereof is overdue then unless the Customer has notified Core in writing that such payment is in dispute within 10 days of the receipt of the corresponding invoice Core may, without prejudice to any other rights or remedies, charge the Customer interest on the overdue amount at the rate of 4% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.11. The Customer shall not be able to dispute any amounts which have been paid by the Customer after a period of 3 months has elapsed from the date of invoice.
- 7.12. Core shall not be obliged to provide any of the Services and/or deliver any Goods while any duly issued invoice(s) continue to remain unpaid after 30 days from notification of late payment under any Scope of Works, but should Core choose to continue to do so, this shall not in any way be construed as a waiver of Core's rights or remedies.
- 7.13. Subject to Clause 7.14 below, the Fees relating to the provision of Services shall increase on an annual basis with effect from each anniversary of the Commencement Date 1% above Consumer Price Index (CPI).
- 7.14. For the avoidance of doubt, Core may increase any fees related to third-party Services or software in line with any increases imposed upon Core by such third parties upon 30 days' notice and inline with the terms of the CSP Customer Agreement or any relevant third party agreement.
- 7.15. Notwithstanding and subject to Clauses 7.13 and 7.14, Core reserves the right, on giving the Customer 30 days' notice, to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. If the Customer does not agree with this increase, then they may terminate this Agreement upon 30



days written notice if such price increase takes effect. If Core does not receive written notice within thirty (30) days, the Customer is deemed to have agreed to the amendment to the Fees.

## 8. Warranties

8.1. The Customer warrants that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Customer; and
- (b) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to Core, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement, including any third-party licences and consents in respect of any Third Party Software.

8.2. Core warrants and represents that:

- (a) it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of Core;
- (b) it owns or has obtained valid licences, consents, permissions and rights to enable Core to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement including for the Customer's use and receipt of the Managed Services, and Core shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached; and
- (c) it will comply with all applicable laws in performing its obligations under this Agreement.

8.3. Except for any warranties expressly set forth in this Agreement, the Services are provided on an "as is" basis, and Customer's use of the Services is at its own risk. Core does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.

8.4. Save only as may be provided for otherwise under any Scope of Works, Core makes no warranty or representation of any data backup with the Services. The Customer is responsible for all database and/or system back-ups as required before any change is carried out.



- 8.5. Core warrants that the Managed Services will be performed with all reasonable skill and care and that it will be provided in accordance with the Scope of Works and the terms and conditions of this Agreement.
- 8.6. The warranty in Clause 8.5 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to Core's instructions.
- 8.7. Core shall not in any circumstances be liable under the warranties in this Clause 8 if it can demonstrate that any failure of the Services to comply with such warranties was caused or contributed to by any Relief Event.
- 8.8. If the Managed Services do not conform with the warranty in Clause 8.5, Core shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.
- 8.9. Notwithstanding the foregoing, Core does not warrant that the Customer's use of the Services will be uninterrupted or error-free.
- 8.10. The Customer hereby warrants that it has not been induced to enter into this Agreement by any prior representations, nor has it relied on any oral representation made by Core or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by Core.

## 9. Acceptance

- 9.1. The relevant Scope of Works shall specify the Deliverables that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.
- 9.2. In relation to any Acceptance Testing:
  - (a) the Customer shall have a reasonable period of time, up to ten Business Days unless otherwise specified in the Scope of Works, from Core's delivery of each Deliverable under the relevant Scope of Works (the "Acceptance Period") to confirm that such Deliverable conforms to the acceptance criteria as agreed between the Parties (collectively, the "Acceptance Criteria"). If the Customer determines that a Deliverable does not conform to the Acceptance Criteria, the Customer shall by the last day of the Acceptance Period provide to Core an Issues List of the non-conformities to the Acceptance Criteria;
  - (b) the Customer shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is



subject to Acceptance Tests and shall notify Core within the Acceptance Period (as defined in Clause 9.2(a)) if any of the Deliverables do not conform to the Acceptance Criteria. In the event that Customer has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under these Conditions such Deliverable, shall be deemed accepted as if the Customer had issued a written acceptance thereof. Once the Deliverable has been accepted by the Customer and payment has been settled in accordance with Clause 7, the Deliverable shall become the property of the Customer. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to Core during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in Clause (c)9.2(c) below.

- (c) If there are any non-conformities within any Deliverable, which have been highlighted by Customer or Core during the Acceptance Period and whereby the Deliverable has not been accepted by the Customer for this reason and such non-conformity is a directly attributable act or omission on the part of Core (and not subject to a Change Request (as defined in Clause 14 or attributable to the Customer's acts or omissions including inadequate Acceptance Testing) Core shall (without prejudice to the Customer's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.
- (d) If any non-conformity cannot be remedied by Core due to an error, defect or fault which Core is able to demonstrate to the reasonable satisfaction of the Customer to be outside Core's control and which has disabled Core's ability to remedy such non-conformity, then Core reserves the right to terminate work on that specific Deliverable. Core agrees not to charge Customer, any amounts paid or payable by Customer to Core which specifically relate to the non-conforming Deliverable which cannot be remedied.

## 10. Customer Data

- 10.1. Core shall promptly notify the Customer in writing of any loss or damage to the Customer Data. Core shall not remove media or data other than with the Customer's permission, and only for the purpose of providing the Services, testing software or at the Customer's express request. Such media or data are held only for as long as necessary for Core to complete the related purpose or as agreed with the Customer, and the Customer may not rely on them in any way as part of Customer backup procedures. Core will use commercially reasonable endeavours to ensure that no data is lost, but disclaims all liability



(whether for breach of contract, in negligence or any other tort, under statute or otherwise at all) for the loss or corruption of any data arising from the Customer's failure to maintain adequate back-up copies of any such data, having regard to the nature of the data and the risk and expense to be incurred arising out of loss or corruption of any such data.

- 10.2. For the purposes of this Clause 10, the terms "controller", "processor", "data subject", "personal data", "personal data breach" and "processing" shall have the meaning given to them in the UK Data Protection Legislation.
- 10.3. Both Parties will comply with all applicable requirements of the Applicable Data Protection Laws. This Clause 10.3 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.
- 10.4. The Parties have determined that, for the purposes of Applicable Data Protection Laws, Core shall process the personal data set out in Schedule 1, as a processor on behalf of the Customer.
- 10.5. Without prejudice to the generality of Clause 10.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to Core for the duration and purposes of this Agreement.
- 10.6. In relation to the Customer Personal Data, Schedule 1 sets out the scope, nature and purpose of processing by Core, the duration of the processing and the types of personal data and categories of data subject ("DP Details"). In the event that the DP Details are not accurate, the Customer must immediately and before signing a Scope of Work identify the changes needed to be made to the DP Details. If no notice of changes has been received before signature, the DP Details shall be agreed by the Parties as accurate.
- 10.7. Core shall not be deemed to have breached any of its obligations as Data Processor by virtue of a breach of the Data Protection Legislation by the Customer as data controller. Core shall not be deemed liable for any claim including but not limited to a claim by a data subject arising from any action or omission by Core to the extent that such action or omission resulted directly from the Customer's instructions.
- 10.8. Without prejudice to the generality of 10.3 Core shall, in relation to Customer Personal Data:
  - (a) process that Customer Personal Data only on the documented instructions of the Customer, unless Core is required by Applicable Laws to otherwise process that Customer Personal Data. Where Core is relying on Applicable Laws as the basis for processing Customer Processor Data, Core shall notify



the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Core from so notifying the Customer on important grounds of public interest. Core shall inform the Customer if, in the opinion of Core, the instructions of the Customer infringe Applicable Data Protection Legislation;

(b) implement appropriate the technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

(c) ensure that any personnel engaged and authorised by Core to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;

(d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to Core), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;

(f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless Core is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this Clause 10.8(f) Customer Personal Data shall be considered deleted where it is put beyond further use by Core; and

(g) maintain records to demonstrate its compliance with this Clause 10 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

10.9. The Customer hereby provides its prior, general authorisation for Core to:

(a) appoint processors to process the Customer Personal Data, provided that Core:





(i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Core in this Clause 10;

(ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Core; and

(iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Core's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify Core for any losses, damages, costs (including legal fees) and expenses suffered by Core in accommodating the objection;

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

10.10. Either Party may, at any time on not less than 30 days' notice, revise this Clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement) where there has not been a European Community finding of adequacy pursuant to Article 45 of the EU GDPR in respect of the UK.

## 11. Intellectual Property Rights

11.1. Subject to Clause 11.2 below, on creation by Core and upon Core receiving payment in full, all Intellectual Property Rights in bespoke materials or code created under the Services ("Bespoke IPR") for the Customer shall vest automatically in the Customer. Core hereby assigns to the Customer its present and future rights and full title and interest in such creations, including but not limited to workflows, widgets, business processes, and customised web coding which are used in order to provide the Services. The Customer hereby provides an irrevocable, worldwide, royalty-free licence to Core for the duration of this Agreement to use such Bespoke IPR strictly for the purposes of providing the Services.



- 11.2. Notwithstanding Clause 11.1 above, Core shall retain exclusive ownership of (i) all of its Background Materials; and (ii) ideas, concepts, techniques and know-how discovered, created or developed by Core during the performance of the Services that are of general application and that are not based on or derived from the Customer's business or Confidential Information ("General IP", together with the Background Materials, the "Core Intellectual Property"). Core grants to the Customer a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use Core Intellectual Property.
- 11.3. The Customer shall pay and indemnify Core and hold it harmless on demand, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Core, arising by reason of claims that (1) Core's possession of or use of the Customer's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Customer or any of its Customers, modify, alter, replace combine with any other data, code, documents or other software, which alters Core's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 11.4. Core shall pay and indemnify Customer and hold it harmless on demand, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Customer, arising by reason of claims that (1) Customer's possession of or use of Core's Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) Core, modifies, alters, replaces combines with any other data, code, documents or other software, which alters the Customer's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 11.5. If an IPR Claim is brought or in the reasonable opinion of Core is likely to be made or brought, Core may at its own expense ensure that the Customer is still able to use the Deliverables by either:
- (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or



- (b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Customer, such acceptance not to be unreasonably withheld.

11.6. The Customer shall promptly notify Core if any IPR Claim or demand is made, or action brought against the Customer for infringement or alleged infringement of any third party right which may affect the provision of Deliverables.

11.7. Except to the extent that Core should reasonably have known or advised the Customer the foregoing provisions of Clause 11.5, Core shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:

- (a) any use by or on behalf of the Customer of the combination with any item not supplied or recommended by Core where such use of the Deliverables directly gives rise to the claim, demand or action; or
- (b) any modification carried out on behalf of the Customer to any item supplied by Core under this Agreement if such modification is not authorised by Core in writing where such modification directly gives rise to a claim, demands or action.

## 12. License of Software

12.1. In consideration of the Fee paid by the Customer to Core, receipt of which Core hereby acknowledges, Core grants to the Customer a non-exclusive, revocable, worldwide, non-transferable licence for the duration of this Agreement until terminated to use of the Software.

12.2. In relation to scope of use:

- (a) for the purposes of Clause 12.1, use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).
- (b) For the purposes of Clause 12.1, "use of the Software" means loading the Software into temporary memory or permanent storage on the relevant computer, provided that installation on a network server for distribution to other computers is not "use" if the Software is licensed under this licence for use on each computer to which the Software is distributed.
- (c) the Customer may not use the Software other than as specified in Clause 12.1 and Clause 12.2(a) without the prior written consent of Core, and the



Customer acknowledges that additional fees may be payable on any change of use approved by Core.

- (d) except as expressly stated in this Clause 12, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, unless Core is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Customer shall request Core to carry out such action or to provide such information (and shall meet Core's reasonable costs in providing that information) before undertaking any such reduction.

12.3. The Customer may not use any such information provided by Core or obtained by the Customer during any such reduction permitted under Clause 12.2(d) to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.

12.4. The Customer shall not:

- (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part, unless expressly consented to in writing by Core;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of its rights and obligations under this Agreement, without the prior written consent of Core.

12.5. The Customer shall:

- (a) ensure that the Software is installed on designated equipment only;
- (b) keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to Core on request from time to time;
- (c) notify Core as soon as it becomes aware of any unauthorized use of the Software by any person;



(d) pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which Core would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

12.6. The Customer shall permit Core to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that Core provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

12.7. The Customer warrants that it shall not compete with the Software product during the term of this Agreement and for a period of 6 years thereafter.

### **13. Exclusions, Limitations of Liability, Warranties and Indemnities**

13.1. The Customer acknowledges and agrees that, except as expressly provided in this Agreement, the Customer assumes sole responsibility for:

- (a) results obtained from the use of the Services, as applicable and the Documents by the Customer, and for conclusions drawn from such use;
- (b) procuring and maintaining the Business Systems, and all network connections and telecommunications links from the Business Systems to Core's systems and data centres;
- (c) all problems, changes, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Customer's or its agents' or contractors' (including any existing service provider's) network connections, router configurations, telecommunications links or facilities, including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and
- (d) loss or damage arising from or relating to any Relief Event.

13.2. This Clause 13 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:



- (a) any breach of this Agreement; and
- (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

13.3. Nothing in this Agreement excludes or limits either Party's liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any other liability which cannot lawfully be excluded or limited.

13.4. Subject to Clause 13.3 above, the Service Level Arrangements state the Customer's full and exclusive right and remedy, and Core's only obligation and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.

13.5. Any breach of the Party's responsibilities under Clause 10 shall be limited to five hundred thousand (£500,000) in the aggregate, which shall count towards the cap set out in Clause 13.6.

13.6. The Parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to one hundred and twenty five percent (125%) of the price paid for the Services during the twelve (12) months preceding the date on which the claim arose.

13.7. Except as expressly and specifically provided in this Agreement:

- (a) neither Party shall have any liability for any losses or damages which may be suffered by the other Party (or any person claiming under or through that Party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
  - (i) special damage even if the other Party was aware of the circumstances in which such special damage could arise;
  - (ii) loss of profits;



- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill and reputation;
- (vi) loss or corruption of data.

13.8. Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. Core shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Core by the Customer in connection with the Managed Services, or any actions taken by Core at the Customer's direction; and
- (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

13.9. Any indemnity set out in this Agreement shall not apply unless the Party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge and gives the other Party full opportunity to control the response to and the defence of such claim; including without limitation, the right to accept or reject settlement offers and to participate in any litigation provided that in no event shall the indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.

13.10. Core shall maintain in force the following insurance policies:

- (a) Public Liability Insurance Policy - limit £5 million per claim;
- (b) Professional Indemnity Insurance Policy - limit £10 million per claim;
- (c) Employers Liability Policy – \_limit £5 million per claim;
- (d) Cyber Insurance - limit £1 million per claim.

## 14. Change Requests

14.1. Either Party may request changes to any Scope of Works (in each case, a “Change Request”). Any Change Request shall be made in writing through the PVF and sent to the Customer representative or Core representative



(as appropriate) and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.

- 14.2. Core shall provide a written estimate of the likely time required to implement the change, any necessary variations to the Fees as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of this Agreement. The Customer shall notify Core whether it accepts or reasonably rejects the Change Request within five working days of its receipt of the written estimate.
- 14.3. A PVF must be signed by a duly authorised representative of both Parties to signify their approval to the change. Until such time the Parties shall continue to perform their respective obligations under the Scope of Works without taking into account the Change Request. Once duly signed, the PVFs shall be deemed incorporated into Agreement and Scope of Works and Core shall commence performance of the Change Request accordingly.
- 14.4. Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.
- 14.5. Unless otherwise agreed in writing, Core shall be entitled to charge the Customer at Core's then current rates for investigating, reporting on and, if appropriate, implementing any Change Request requested by the Customer.

## 15. Confidentiality

- 15.1. Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by the relevant Scope of Works.
- 15.2. To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 15.1.
- 15.3. The obligations of confidentiality set out in this Clause 15 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the





disclosing Party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving Party without use of or reference to the Confidential Information.

## 16. Term and Termination

- 16.1. This Agreement and each Scope of Works shall commence on the Commencement Date and shall remain in full force for the Initial Term unless otherwise agreed by the Parties or earlier terminated in accordance with the terms of this Agreement. Thereafter, this Agreement and each Scope of Works shall continue to automatically renew for a Subsequent Term, unless a Party gives written notice to the other Party, not later than ninety (90) days before the end of the Initial Term or the relevant Subsequent Term, to terminate this Agreement.
- 16.2. Without prejudice to any rights that the Parties have accrued under this Agreement or any of their respective remedies, obligations or liabilities, a Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- (a) The other party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified to do so;
  - (b) the other Party breaches any of the terms of Clause 10, Clause 15 or Clause 20; or
  - (c) 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, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 16.3. Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.
- 16.4. On termination of this Agreement for any reason:
- (a) Core shall immediately cease provision of the Services;
  - (b) the Customer shall pay any and all invoices and sums due and payable up to and including the date of termination including (1) all remaining amounts owing up to the end of the Initial Term; or any Subsequent Term (as applicable) (2) any termination fees that Core incurs from any



of its third party suppliers or software providers as a consequence of such early termination. Core shall use reasonable endeavours to mitigate any loss, but the Customer acknowledges and agrees that any third-party fees may not be mitigated by Core and the Customer shall not hold Core responsible if it incurs full termination fees; and

- (c) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.

- 16.5. Save as provided in Clause 16 or elsewhere in this Agreement, or by mutual consent and on agreed terms, or due to a Force Majeure, neither Party shall be entitled to terminate a Scope of Works. Termination of a Scope of Works shall not by default, terminate other Scope of Works nor this Agreement.
- 16.6. Termination of any Scope of Works shall be without prejudice to any other rights which any Party may have under any other Scope of Works.
- 16.7. Upon termination of this Agreement or a specific Scope of Works for any reason Core will provide to the Customer and/or to any new supplier selected by the Customer (the "Successor Service Provider") such assistance as reasonably requested by the Customer in order to effect the orderly transition of the applicable Services, in whole or in part, to the Customer or to Successor Service Provider (such assistance shall be known as the "Termination Assistance Services") during any period of notice of termination (the "Termination Assistance Period"). Any services required by the Customer for the transition of Services during the Termination Assistance Period shall be provided by Core at its then current time and materials fee rate for such period of time as shall be mutually agreed. Such Termination Assistance Services may include:
  - (a) developing a plan for the orderly transition of the terminated Services from Core to the Customer or the Successor Service Provider; and
  - (b) such other activities upon which the Parties may agree including any non-proprietary documents to enable a Successor Service Provider to continue to provide services.
- 16.8. Upon a termination of the Agreement or a specific Scope of Works (as applicable), Core shall only retain the Customer Data for a maximum period of three (3) months from the date of termination and may delete all such copies of its Customer Data after the three (3) months period has ended.



- 16.9. The provisions of Clauses 7, 8, 10, 11, 12, 13, 15, 16, 17, 18 and 20 shall survive termination of any Scope of Works or this Agreement.

## **17. Staff Transfer and Non-Solicitation**

- 17.1. It is not intended that any staff be transferred from Core to the Customer or from the Customer to Core pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('the Regulations').
- 17.2. Neither Party shall solicit the other Party's staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of 9 months thereafter. For the purposes of this Clause 17.2 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.
- 17.3. In the event that either Party is in breach of Clause 17.2 above then the Party in breach shall pay to the other by way of liquidated damages an amount equal to 50% per cent of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant Party) of the person so employed or engaged. This provision shall be without prejudice to either Party's ability to seek injunctive relief.
- 17.4. The Parties hereby acknowledge and agree that the formula specified in Clause 17.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

## **18. Relief Events**

Subject to Clause 13.3, and notwithstanding any other provision of this Agreement, Core shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

## **19. Force Majeure**

- 19.1. Core shall have no liability to the Customer under this Agreement and the Customer shall have no obligation to pay the Fees if Core is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by an event of Force Majeure except to the extent that Core could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of this Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), provided that:



- (a) the Customer is notified of such an event and its expected duration;  
and
  - (b) Core uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure event concerned,
- and that if the period of delay or non-performance continues for four (4) weeks or more, the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other Party.

## 20. Anti-Bribery

20.1. Core shall:

- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (Relevant Requirements);
- (b) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by Core in connection with the performance of this Agreement.

20.2. Core shall procure that any person associated with Core, who is performing services in connection with this Agreement, adheres to terms equivalent to those imposed on Core in this Clause 20 ("Relevant Terms"). Core shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

20.3. For the purpose of this Clause 20, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 20 a person associated with Core includes any subcontractor of Core.

## 21. Waiver

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.



## 22. Severance

- 22.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 22.2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

## 23. Entire Agreement and Amendment

- 23.1. This Agreement constitutes the entire Agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and Agreements between them relating to its subject matter.
- 23.2. Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 23.3. Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.
- 23.4. No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

## 24. Assignment

Core may assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of the Customer.

## 25. No Partnership or Agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party,



nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## 26. Third-Party Rights

This Agreement is made for the benefit of the Parties, to it and (where applicable) their successors and permitted assigns, and Microsoft (in respect of enforcing the terms of the CSP Customer Agreement) and is not intended to benefit or be enforceable by anyone else.

## 27. Notices

- 27.1. Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email to the email addresses set out in the Scope of Works.
- 27.2. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 27.3. This Clause 27 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. For the purposes of this Clause 27, "writing" shall include e-mail.

## 28. Dispute Resolution

- 28.1. If a dispute arises under this Agreement ("Dispute"), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process ("Dispute Notice").
- 28.2. If the Parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five Business Days thereafter):
  - (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement ("Designated Representative"); and



(b) notify the other Party in writing of the name and contact information of such Designated Representative.

28.3. The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party will be honoured.

28.4. If the Parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Designated Representatives, then either Party may proceed with any other available remedy.

## **29. Marketing**

29.1. Both Parties agree to reasonably cooperate in connection with the creation of mutually beneficial marketing communications, which shall include, at a minimum, a press release, case study and a reference to Customer on Core's website, provided that in no event shall either Party use the name, trademarks or other proprietary identifying symbols of the other Party without such Party's prior written consent, which consent shall not be unreasonably withheld or delayed.

## **30. Governing Law and Jurisdiction**

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

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



## Schedule 1 Particulars of the Processing

|   |  |
|---|--|
| <b>Data Subjects:</b>                       | <p>Customer personnel</p> <p>Customer clients</p> <p>Customer third parties</p> <p>Business contracts in general</p>   |
| <b>Types of personal data:</b>              | <p>Name</p> <p>Job title</p> <p>Email address</p> <p>Phone number</p> <p>Business/home address</p> <p>Date of birth</p> <p>Place of birth</p> <p>Any other personal data provided by Customer to Core</p>  |
| <b>Special categories of personal data:</b> | None   |
| <b>Purpose of processing:</b>               | <p>In the case of data subjects other than staff: for the purpose of providing IT services and support to Customer's business.</p> <p>In the case of staff: for the purpose of providing IT services and support for Customer's employment and HR matters.</p> |
| <b>Nature of processing:</b>                | As set out in the body of the agreement.   |
| <b>Additional instructions:</b>             | None   |

