TERMS OF BUSINESS

Software
Cloud

15 St. Paul's Street, Leeds, LS1 2JG

AGREED TERMS

1.   DEFINITIONS AND INTERPRETATION

1.1   The definitions and rules of interpretation in this clause apply in these Terms and Conditions (unless the context requires otherwise).

"**Affiliate**" means an entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

"**Contract**" means these Terms and Conditions and any emails from Software Cloud detailing the Services to be provided.

"**Applicable Laws**" means all applicable laws, statutes, regulations and codes from time to time in force.

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

"**Business Hours**" means the period from 9.00 am to 5.00 pm on any Business Day.

"**Change Order**" has the meaning given in clause 7.1.

"**Charges**" means the sums payable for the Services, as agreed between the parties elsewhere.

"**Consultancy Services**" means any consultancy services to be supplied to the Customer as agreed by Software Cloud.

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

"**Customer**" means the Company requesting the Goods or Services.

"**Customer's Equipment**" means any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services.

"**Customer Materials**" means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to Software Cloud in connection with the Services, including the items provided pursuant to clause 5.1.4.

"**Deliverables**" means any output of the Services to be provided by Software Cloud to the Customer.

"**EULA**" means the End User Licence Agreement for the Third Party Software or SAAS.

"**Goods**" means any hardware or software (including any Third Party Software) or SAAS that is provided to the Customer either in connection with or incidental to the supply of Services.

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

"**Order**" means an order from the Customer for the Goods and/or Services to be provided by Software Cloud in a form and method as set out in clause 3.

"**SAAS**" means software as a service, including but not limited to any cloud based software and applications resold by Software Cloud.

"**Services**" Means any services required as part of the implementation of the Goods, as outlined on the Order Form.

"**Services End Date**"   means the date on which the Services are terminated or the

term as agreed by Software Cloud, as specified on the Order Form.

"Services Start Date" means the date specified on the Order Form.

"Special Terms" means any variations to these Terms and Conditions (if any) as agreed in writing by the parties.

"Software Cloud" means Software Cloud Limited (Company number 09157482), 15 St Pauls Street, Leeds, West Yorkshire LS1 2JG.

"Software Cloud's Equipment" means any equipment, including tools, systems, cabling or facilities, provided by Software Cloud to the Customer and used directly or indirectly in the supply of the Services but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

"Terms of Business" means these terms of business.

"Third Party Software" means any software that is resold to the Customer by Software Cloud Limited.

"VAT" means value added tax chargeable under the Value Added Tax Act 1994.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Contract.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Contract.

1.9 A reference to writing or written includes fax and email.

1.10 A reference to this Contract or to any other agreement or document referred to in this Contract is a reference to this Contract or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Contract) from time to time.

2. **APPLICATION OF THESE TERMS AND CONDITIONS**

2.1 These Terms and Conditions apply to and form part of the Contract between the Customer and Software Cloud and supersede any previously issued terms and conditions of purchase or supply by the Customer.

2.2 These Terms and Conditions apply to each Order by the Customer that is accepted by Software Cloud to the exclusion of all other terms and conditions that the Customer may seek to impose.

2.3 No terms or conditions endorsed on, delivered with, or contained in any correspondence from the Customer, any quotation, sales conditions, confirmation of order, specification or other document shall form part of the Contract except to the extent that a director of Software Cloud expressly agrees in writing.

2.4 No variation of these Terms and Conditions or to any term of an Order that a Customer seeks to include, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of Software Cloud.

3. **ORDER**

3.1 The submission of an Order by the Customer to Software Cloud shall be an offer to purchase the Goods and/or Services from Software Cloud.

3.2 Acceptance of the Order by Software Cloud shall take place when it is expressly accepted or by any other conduct of Software Cloud which in the reasonable opinion of Software Cloud is consistent with acceptance of the Order.

3.3 The Order shall:

3.3.1 be given in writing or, if given orally, shall be confirmed in writing within two Business Days;

3.3.2 specify the type and quantity of Goods to be ordered, and the Goods' code numbers (if applicable);

3.3.3 specify the type and quantity of Services required by the Customer; and

3.3.4 specify any dates or timelines for commencement of the supply of Services or delivery of the Goods.

3.4 Software Cloud may, acting reasonably, at any time prior to provision/despatch of the Goods or commencement of the provision of the Services amend or cancel the Order by written notice to the Customer. If Software Cloud amends or cancels the Order, its liability to the Customer shall be limited to the amount of payment received from the Customer for any Goods and/or Services that have been delivered to the Customer, except that where the amendment or cancellation results from the Customer's failure to comply with its obligations under this Contract, Software Cloud shall have no liability to the Customer in respect of it.

4. **SOFTWARE CLOUD'S RESPONSIBILITIES**

4.1 Software Cloud shall use reasonable endeavours to provide the Services in accordance with this Contract in all material respects.

4.2 Software Cloud shall use reasonable endeavours to meet any performance dates or where applicable to the Services, but unless expressly agreed in writing prior to the commencement of the Services, any such dates shall be estimates only and time for performance by Software Cloud shall not be of the essence of this Contract.

4.3 Software Cloud shall appoint a manager for the Services and that person shall have authority to contractually bind Software Cloud on all matters relating to the Services (including by signing Change Orders). Software Cloud may replace that person from time to time where reasonably necessary in the interests of Software Cloud's business.

4.4 Software Cloud shall use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it in writing, provided that it shall not be liable under this Contract if, as a result of such observation, it is in breach of any of its obligations under this Contract.

5. **CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall:

5.1.1 co-operate with Software Cloud in all matters relating to the Services;

5.1.2 appoint a manager for the Services, such person as identified on the Order Form.

That person shall have the authority to contractually to bind the Customer on matters relating to the Services (including by signing Change Orders);

5.1.3 provide, for Software Cloud, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by Software Cloud;

5.1.4 provide to Software Cloud in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) reasonably required by Software Cloud in connection with the Services and ensure that they are accurate and complete;

5.1.5 inform Software Cloud of all health and safety and security requirements that apply at any of the Customer's premises;

5.1.6 ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;

5.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable Software Cloud to provide the Services, including in relation to the installation of Software Cloud's Equipment, the use of all Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start and

5.1.8 where Third Party Software or SAAS is provided as part of the Goods, accept the terms of any EULA or other third party terms relating to the Software or SAAS;

5.1.9 keep, maintain and insure Software Cloud's Equipment in accordance with Software Cloud's

instructions from time to time and shall not dispose of or use Software Cloud's Equipment other than in accordance with Software Cloud's written instructions or authorisation.

5.2 If Software Cloud's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, Software Cloud shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

6. NON-SOLICITATION

The Customer shall not, without the prior written consent of Software Cloud, at any time from the date of this Contract to the expiry of 12 months after the completion of the Services, or the termination or expiry of this Contract, solicit or entice away from Software Cloud or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Software Cloud in the provision of the Services.

7. CHANGE CONTROL

7.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

7.1.1 the Services;

7.1.2 Software Cloud's existing charges;

7.1.3 the timetable of the Services; and

7.1.4 any of the terms of this Contract.

7.2 If Software Cloud wishes to make a change to the Services it shall provide a draft Change Order to the Customer.

7.3 If the Customer wishes to make a change to the Services:

7.3.1 it shall notify Software Cloud and provide as much detail as Software Cloud reasonably requires of the proposed changes, including the timing of the proposed changes; and

7.3.2 Software Cloud shall, as soon as reasonably practicable after receiving the information at

clause 7.3.1, provide a draft Change Order to the Customer.

7.4 If the parties agree to a Change Order, they shall sign it and that Change Order shall amend this Contract.

7.5 Software Cloud may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 7.3 on a time and materials basis at Software Cloud's daily rates.

8. CHARGES AND PAYMENT

8.1 In consideration of the provision of the Goods and/or Services by Software Cloud, the Customer shall pay the Charges.

8.2 Where the Charges are calculated on a time and materials basis:

8.2.1 Software Cloud's standard daily fee rates for each individual person are calculated on the basis of an eight hour day, worked during Business Hours;

8.2.2 Software Cloud shall be entitled to charge an overtime rate of 150% of the standard daily fee rate on a pro rata basis for any time worked by individuals whom it engages on the Services outside Business Hours; and

8.2.3 Software Cloud shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and Software Cloud shall indicate the time spent per individual in its invoices.

8.3 The Charges exclude the following which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:

8.3.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Software Cloud engages in connection with the Services; and

8.3.2 the cost to Software Cloud of any materials or services procured by Software Cloud from third parties for the provision of the Services as such items and their cost are available upon request.

8.4 Software Cloud shall invoice the Customer for the Charges at the intervals specified in the

Order Form. If no intervals are so specified Software Cloud shall invoice the Customer at the end of each month for the Goods or Services delivered/performed during that month.

8.5 The Customer shall pay each invoice submitted to it by Software Cloud within 30 days of receipt to a bank account nominated in writing by Software Cloud from time to time.

8.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Software Cloud any sum due under this Contract on the due date:

8.6.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's 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; and

8.6.2 Software Cloud may suspend all or part of the Goods and /or Services until payment has been made in full.

8.7 All sums payable to Software Cloud under this Contract:

8.7.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and

8.7.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8.8 Where Software Cloud sources Goods or Services from outside of the UK, and the cost of such Goods or Services increases as a consequence of currency rate fluctuations, Software Cloud may increase the Charges payable by the Customer at its discretion but not by a greater percentage than the increase caused by the currency rate fluctuation. Software Cloud shall give the Customer reasonable notice of any such increase

9. INTELLECTUAL PROPERTY RIGHTS

9.1 In relation to the Deliverables:

9.1.1 Software Cloud and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Customer Materials;

9.1.2 Software Cloud grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Contract to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and

9.1.3 the Customer shall not, unless agreed in writing with Software Cloud, sub-license, assign or otherwise transfer the rights granted in clause 9.1.2:

9.1.3.1 to its Affiliates and customers; and

9.1.3.2 subject to their entering into appropriate confidentiality undertakings, to third parties for the purpose of the Customer's receipt of services similar to the Services.

9.2 In relation to SAAS and Third Party Software, the owner of the Third Party Software shall retain ownership of all IPRs in accordance with the respective EULA.

9.3 In relation to any Customer Materials, the Customer:

9.3.1 and its licensors shall retain ownership of all IPRs in the Customer Materials; and

9.3.2 grants Software Cloud a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Contract for the purpose of providing the Good and/or Services to the Customer.

9.4 Software Cloud:

9.4.1 warrants that the receipt, use and where agreed in writing in advance, the onward supply of the Services and the Deliverables by the Customer and its permitted sub-licensees shall not infringe any rights of third parties to the extent that infringement results from copying;

9.4.2 shall, subject to clause 12.3, keep the Customer indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services, and the Deliverables; and

9.4.3 shall not be in breach of the warranty at clause 9.4.1, and the Customer shall have no claim under the indemnity at clause 9.4.2, to the extent the infringement arises from:

9.4.3.1 the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;

9.4.3.2 any modification of the Deliverables or Services, other than by or on behalf of Software Cloud; and

9.4.3.3 compliance with the Customer's specifications or instructions, where infringement could not have been avoided

while complying with such specifications or instructions and provided that Software Cloud shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.

9.5 The Customer:

9.5.1 warrants that the receipt and use of the Customer Materials in the performance of this Contract by Software Cloud, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

9.5.2 shall keep Software Cloud indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Software Cloud as a result of or in connection with any claim brought against Software Cloud, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Contract of the Customer Materials and the Third Party Software.

9.6 If either party (the Indemnifying Party) is required to indemnify the other party (the Indemnified Party) under this clause 9., the Indemnified Party shall:

9.6.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 9.4.2 or clause 9.5.2 (as applicable), ("**IPRs Claim**");

9.6.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying

Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

9.6.3   provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by Software Cloud of the Indemnified Party's costs so incurred; and

9.6.4   not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

10.   **DATA PROTECTION AND DATA PROCESSING**

Each party agrees that, in the performance of their respective obligations under this Contract, it shall comply with the provisions of Schedule 1.

11.   **CONFIDENTIALITY**

11.1   Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.

11.2   Each party may disclose the other party's confidential information:

11.2.1   to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

11.2.2   as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

12.   **LIMITATION OF LIABILITY**

12.1   Nothing in this Contract shall limit or exclude Software Cloud's liability for:

12.1.1   death or personal injury caused by its negligence;

12.1.2   fraud or fraudulent misrepresentation; or

12.1.3   breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

12.2   Subject to clause 12.1, Software Cloud shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for:

12.2.1   loss of profits;

12.2.2   loss of sales or business;

12.2.3   loss of agreements or contracts;

12.2.4   loss of anticipated savings;

12.2.5   loss of or damage to goodwill;

12.2.6   loss of use or corruption of software, data or information; and

12.2.7   any indirect or consequential loss.

12.3   Subject to clause 12.1, Software Cloud's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited:

12.3.1   If the Contract is for a period of 12 months or greater than 100% of the average annual Charges (calculated by reference to the charges in successive 12 month periods from the date of this Contract) paid by the Customer under this Contract; or

12.3.2   if the Contract is for a period of less than 12 months than 100% of the Charges paid by the Customer under this Contract.

12.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.

13. TERMINATION

13.1 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

13.1.1 the other party commits a material breach of any other term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of ten business days after being notified in writing to do so;

13.1.2 the other party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

13.1.3 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

13.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

13.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more

other companies or the solvent reconstruction of that other party;

13.1.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

13.1.7 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

13.1.8 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

13.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

13.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1.3 to clause 13.1.9 (inclusive); or

13.1.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.2 For the purposes of clause 13.1.1 material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Contract over the term of this Contract. In deciding whether any breach is material no regard shall be had to whether it

occurs by some accident, mishap, mistake or misunderstanding.

13.3 Without affecting any other right or remedy available to it, Software Cloud may terminate this Contract with immediate effect by giving written notice to the Customer if:

13.3.1 the Customer fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or

13.3.2 there is a change of control of the Customer.

14. **CONSEQUENCES OF TERMINATION**

14.1 On termination or expiry of this Contract:

14.1.1 the Customer shall immediately pay to Software Cloud all of Software Cloud's outstanding unpaid invoices and interest and, in respect of the Goods and/or Services supplied but for which no invoice has been submitted, Software Cloud may submit an invoice, which shall be payable immediately on receipt;

14.1.2 the Customer shall return all of Software Cloud's Equipment. If the Customer fails to do so, then Software Cloud may enter the Customer's premises and take possession of Software Cloud's Equipment and any Goods that have not been paid for. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe-keeping;

14.1.3 Software Cloud shall on request return any of the Customer Materials not used up in the provision of the Services; and

14.1.4 the following clauses shall continue in force: clause 1 (*Definitions and interpretation*), clause 6 (*Non-solicitation*), clause 9 (*Intellectual Property Rights*), clause 11 (*Confidentiality*), clause 12 (*Limitation of liability*), clause 14 (*Consequences of termination*), clause 18 (*Waiver*), clause 20 (*Severance*), clause 25 (*Governing law*) and clause 26 (*Jurisdiction*).

14.2 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.3 For the avoidance of doubt, Termination or expiry of this Contract shall terminate the supply of all Goods and Services. Where any SAAS is being provided to the Customer, access to the SAAS will be terminated immediately.

15. **FORCE MAJEURE**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for more than three months, the party not affected may terminate this Contract by giving seven days' written notice to the affected party

16. **ASSIGNMENT AND OTHER DEALINGS**

16.1 This Contract is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.

16.2 Software Cloud may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this Contract, provided that Software Cloud gives prior written notice of such dealing to the Customer.

17. **VARIATION**

Subject to clause 7, no variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. **WAIVER**

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

18.2 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that

or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.3 A party that waives a right or remedy provided under this Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

19. **RIGHTS AND REMEDIES**

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

20. **SEVERANCE**

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

20.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. **ENTIRE AGREEMENT**

21.1 This Contract (consisting of these Terms and Conditions and the Order Form) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.2 The EULA or the Third Party Software contract forms a separate contract between the Customer and the party specified in the EULA. Such contract is separate and in addition to the terms of this Contract.

21.3 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent

misstatement based on any statement in this Contract.

22. **NO PARTNERSHIP OR AGENCY**

22.1 Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

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

23. **THIRD PARTY RIGHTS**

No one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

24. **NOTICES**

24.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be:

24.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

24.1.2 sent by email to the address specified in the Order Form.

24.2 Any notice or communication shall be deemed to have been received:

24.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

24.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 0900 on the second Business Day after posting or at the time recorded by the delivery service;

24.2.3 if sent by email, at 0900 on the next Business Day after transmission.

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

25. **GOVERNING LAW**

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

26. **JURISDICTION**

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

SCHEDULE 1

Part 1 OPERATIVE PROVISIONS

1. **DEFINITIONS**

1.1 In this Schedule:

"Controller" has the meaning given in applicable Data Protection Laws from time to time;

"Data Protection Laws" means, as binding on either party or the Services:

(a) the GDPR;

(b) the Data Protection Act 2018;

(c) any laws which implement any such laws; and

(d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

"Data Subject" has the meaning given in applicable Data Protection Laws from time to time;

"GDPR" means the General Data Protection Regulation, Regulation (EU) 2016/679;

"International Organisation" has the meaning given in applicable Data Protection Laws from time to time;

1.1 **"Personal Data"** has the meaning given in applicable Data Protection Laws from time to time;

1.2 **"Personal Data Breach"** has the meaning given in applicable Data Protection Laws from time to time;

1.3 **"processing"** has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process, processed, processing, and processes shall be construed accordingly);

1.4 **"Processor"** has the meaning given in applicable Data Protection Laws from time to time;

1.5 **"Protected Data"** means Personal Data received from or on behalf of the Customer in connection with the performance of Software Cloud's obligations under this Contract; and

"Sub-Processor" means any agent, subcontractor or other third party (excluding its employees) engaged by Software Cloud for carrying out any processing activities on

behalf of the Customer in respect of the Protected Data.

2. **CUSTOMER'S COMPLIANCE WITH DATA PROTECTION LAWS**

The parties agree that the Customer is a Controller and that Software Cloud is a Processor for the purposes of processing Protected Data pursuant to this Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Software Cloud in respect of Protected Data (including the terms of this Contract) shall at all times be in accordance with Data Protection Laws.

3. **SOFTWARE CLOUD'S COMPLIANCE WITH DATA PROTECTION LAWS**

Software Cloud shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Contract.

4. **INDEMNITY**

The Customer shall indemnify and keep indemnified Software Cloud against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this Schedule.

5. **INSTRUCTIONS**

5.1 Software Cloud shall only process (and shall ensure Software Cloud Personnel only process) the Protected Data in accordance with this Contract (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).

5.2 If Software Cloud believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

6. SECURITY

Taking into account the state of technical development and the nature of processing, Software Cloud shall implement and maintain appropriate technical and organisational measures to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

7. SUB-PROCESSING AND PERSONNEL

7.1 Software Cloud shall:

7.1.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of the Customer;

7.1.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this Schedule that is enforceable by Software Cloud and ensure each such Sub-Processor complies with all such obligations;

7.1.3 remain fully liable to the Customer under this Contract for all the acts and omissions of each Sub-Processor as if they were its own; and

7.1.4 ensure that all persons authorised by Software Cloud or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

8. ASSISTANCE

8.1 Software Cloud shall (at the Customer's cost) assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Software Cloud.

8.2 Software Cloud shall (at the Customer's cost) taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

9. INTERNATIONAL TRANSFERS

Software Cloud shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written consent of the Customer.

10. AUDITS AND PROCESSING

Software Cloud shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate Software Cloud's compliance with the obligations placed on it under this Schedule and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this paragraph 10).

11. BREACH

Software Cloud shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

12. DELETION/RETURN AND SURVIVAL

On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, Software Cloud shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Software Cloud to store such Protected Data. This Schedule shall survive termination or expiry of this Contract.