

## 1.0 DEFINITIONS AND INTERPRETATION

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

**Applicable Laws** means all laws, ordinances, rules, regulations, by-laws, decrees and orders, whether of governmental or other authority or agency having jurisdiction over the relevant Party and which govern any part of the work and includes Data Protection Legislation (as defined below);

**Consequential Loss** means (a) consequential or indirect loss and (b) loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), and wasted costs in each case whether direct or indirect to the extent that these are not included in (a), and whether or not foreseeable at the effective date of the Contract;

**Confidential Information** means all information that is discovered by one Party because of or through its connection with the other Party which is about or relating to the other Party's business or people (including directors or partners, investors, staff, suppliers, customers, clients, prospects and contractors) but excluding information that is openly published by the other Party or information that is publicly available without breach of existing confidentiality obligations;

**Consulting Services** means consultants provided by Us to You on a chargeable day rate to complete agreed work either on a time and materials or a fixed price basis and are addressed in the Appendix to these General Terms and Conditions;

**Contract** means an agreement (of which these terms and conditions form a part) between the Parties for the provision by Us to You of Software and Services;

**Customer Cause** has the meaning set out in Clause 3.2;

**Data Protection Legislation** means the Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR) and all other laws and regulations from time to time in force which apply to a party in connection with the use of Personal Data (including, without limitation, the privacy of electronic communications) and the binding codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party;

**Development Services** means expert consultants provided by Us to You on a chargeable day rate to complete agreed development work on a time and materials basis only and are addressed in the Appendix to these General Terms and Conditions;

**Good Industry Practice** means the exercise of the degree of skill, care, prudence, efficiency, foresight and timeliness with would reasonably be expected from a person skilled and experienced in providing hardware, software and services similar to the hardware, software and services;

**Insolvency Event** means the presentation of a bankruptcy or winding-up petition against You, the appointment of a manager, receiver or administrator over all or any part of Your assets, the commencement of any winding-up process (other than for the purposes of reconstruction or amalgamation), the entry into or proposal of any form of arrangement or composition with Your creditors, and anything analogous to any of the foregoing in any jurisdiction;

**Losses** means all losses, liabilities, damages, costs, charges, and expenses but excludes Consequential Loss;

**Microsoft Cloud Services (CSP)** means the provision of Microsoft services invoiced by Us to You which are purchased from Microsoft by Us under Our Microsoft Cloud Solutions Provider Agreement, including Microsoft 365 services, Azure services and Microsoft reserved instances and are addressed in the Appendix to these General Terms and Conditions;

**Microsoft Cloud Solutions Provider Agreement** means Our agreement or other arrangement with Microsoft for the provision of Microsoft Cloud Services and Microsoft Licences;

**Microsoft Licences** means the Microsoft Licences provided by Us or Microsoft in connection with Your Microsoft Cloud Services

**Order** means a written request or instruction issued to Us by You in respect of Your required Software and Services, subject always to the terms and conditions of the Contract;

**Party** means Us or You as the case may be;

**Personal Data** means any information which is related to an identified or identifiable natural person, as more particularly described in the GDPR;

**Personnel** means employees, agents, consultants and sub-contractors;

**Price** means the rates, charges and prices specified in the Contract and representing the compensation payable to Us for provision of the Software and Services;

**Quotation** means the priced offer by Us to perform the Services which, when adjusted by the Parties as necessary and accepted by You, will be reflected in the Contract.

**Related Service Providers** means Our partners, affiliates and other third parties that provide software or services in connection with the Contract, including Microsoft;

**Relevant Information** has the meaning set out in Clause 4.2.1;

**Relevant Premises** means Your place of business or any other premises where the Software and Services are to be installed and used;

**Services** means all products, services, knowhow, training, guidance and support provided by Us and a reference to Services will be interpreted accordingly;

**Services Agreement** means specific quantitative and qualitative performance standards and commitments for the Software and Services, including service levels and dates and times;

**Software** means a set of instructions, data, or programs used to operate a computer and execute specific tasks and as supplied by Related Service Providers;

**Specific Service Terms** has the meaning set out in Clause 2.2

**Support and Managed Services** means the supporting services provided by Us to manage, support and maintain the technologies agreed between You and Us and are addressed in the Appendix to these General Terms and Conditions;

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

**Third Party Amounts** means the value of the Contract or any Order made thereunder that is attributable to Microsoft Cloud Services, Microsoft Licenses, and Software;

**We and Us** means Appetite for Business Ltd Registered Office: Davidson House, Innovation Park, Campus 1, Aberdeen, AB22 8GT. Registered in Scotland No. SC530648 and reference to **Our** will be construed accordingly; and

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

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

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

## **2.0 RELATED SERVICE PROVIDERS**

### **2.1 Service Specific Terms**

- 2.1.1 You acknowledge that certain Software and Services may be provided by Related Service Providers as part of a multi-supplier environment where We act as a reseller of Software and Services. In such case, the Software and Services We agree to supply to You may be subject to service specific terms and conditions from time to time relating to Your access and/or use of the applicable Software and Services due to their nature or because We provide them as a reseller for a Related Service Provider.
- 2.1.2 You accept the Service Specific Terms set out or referred to in the Appendix. We will provide You with details of any updates to the Service Specific Terms.

2.2 You will co-operate with and assist each Related Service Provider.

### **2.3 Marketing Materials and Proposals**

- 2.3.1 We will ensure that all marketing materials and proposals provided by Us to You are prepared in good faith.
- 2.3.2 Any marketing materials and proposals (including all associated documentation, estimates, quotations, correspondence and information) provided by Us to You are for information purposes only.
- 2.3.4 Any information contained in marketing materials or proposals, including any description of the Software and Services, the Price of the Software and Services and how We intend to provide the Software and Services, that is intended to form part of the Contract will be expressly set out in or expressly referred to in the Contract.

### **2.4 Changes**

- 2.4.1 We or Our Related Service Providers may change the terms (including the specification) of the Services from time to time.
- 2.4.2 If any change by Us or Our Related Service Providers has a material adverse effect on the functionality, performance or quality of the Software or Services then You may terminate the affected Service
- 2.4.3 If You request Us to change the terms (including the specification) of the Software or Services after the Contract comes into effect or Your Order has been placed, We may consider doing so at Our discretion, and any such alteration may be subject to an increase of the Price.

## **3.0 YOUR ORDERS**

3.1 You will ensure that the terms of Your Order are complete and accurate and We will not commence the provision of Software or Services until an Order has been issued to Us.

### **3.2 Relevant Information**

- 3.2.1 You confirm at the time placing each of Your Orders that You have given Us all necessary and Relevant information that You hold and any further information that You suspect may make the supply of Software or Services under Your Order significantly more difficult to make or carry out..
- 3.2.2 You will promptly give Us any Relevant Information that You become aware of after placing Your Order that You have not at the relevant time given to Us in accordance with Clause 3.2.1.

### **3.3 Order Cancellation**

- 3.3.1 If You wish to cancel Your Order for Software or Services, You may provide Us with written notice of Your request to cancel Your Order within fourteen (14) days of placing Your Order. You may cancel Your Order for Services outside this fourteen (14) day period as set out in the Specific Service Terms.
- 3.3.2 If We agree to Your request to cancel Your Order, You will be required to pay Us for the proportion of Your Order which We have fulfilled as at the date of cancellation (if any) and any direct Losses that We incur as a result of Your cancellation, such as early termination fees from Our Related Service Providers (if any). We will inform You of the sums required to be paid by You if You wish to cancel Your Order.

3.3 Resource cancellation

3.3.1 If You book resources, either through placing an Order or calling off from an existing pre-paid arrangement, and these are cancelled or rescheduled by You on not more than twenty (20) working days' notice prior to the date on which such resources were scheduled to be first provided,

3.3.2 We will endeavour to reallocate the resources to other projects but reserve the right to charge the following cancellation fees based upon the amount of notice given prior to the date such resources were scheduled to be first provided and the number of days the resources were allocated to the Services:

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

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

\*\* Percentage of the applicable rate payable for the number of days for which the resources had been allocated to the Services and cannot reasonably be reallocated to other work.

**4.0 PERFORMANCE**

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

- (a) all Applicable Laws; and
- (b) Good Industry Practice.

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

4.3 You will

- (a) co-operate with Us in all matters relating to the Contract and provide Us and Our Personnel with such information, access and materials as We or Our Personnel may reasonably require in order to supply the Software and Services;
- (b) prepare the Relevant Premises for the supply of the Software and Services as specified by Us in any documents forming the Contract;
- (c) other than the licences We agree to supply to You under the Contract, obtain and maintain all other licences, permissions and consents which may be required for You to receive and use the Software and Services;
- (d) comply with all Applicable Laws in connection with the Contract and the performance of Your obligations under the Contract; and
- (e) keep all materials, equipment, documents and other property of Us or Our Personnel that are provided to You or at any Relevant Premises in good condition and in safe custody at Your own risk. Additionally, You will not dispose of, or use, the same other than in accordance with Our written instructions or authorisation.

4.4 Customer Cause

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

- 4.4.2 We will have the right to suspend the supply of Software and Services that are affected by the Customer Cause until You remedy the Customer Cause to Our reasonable satisfaction. We may terminate the affected Software or Services if You fail to remedy the Customer Cause within a period that is acceptable to Us acting reasonably;
- 4.4.3 We may rely on the Customer Cause to relieve Us from any non-performance or delay in performance of Our obligations to the extent those obligations are affected by the Customer Cause. Accordingly, We will not be liable for any Losses sustained or incurred by You as a result of any non-performance or delay in performance of any of Our obligations affected by a Customer Cause; and
- 4.4.4 You will reimburse Us for any Losses sustained or incurred by Us arising from the Customer Cause.

## **5.0 LIABILITIES**

- 5.1 Subject to Clause 5.6, We do not accept liability for:
- (a) any Loss of any kind relating to the loss of data in any format however it is stored (whether direct or indirect);
  - (b) any Loss or incompatibility of third party software (whether direct or indirect, all of which will be installed at Your sole discretion and risk; and
  - (c) for any Loss arising from hardware faults or hardware related issues (whether direct or indirect).
- 5.2 With reference to Clause 5.1 (a), You assume all responsibility for the correct storage of data and for ensuring that the data is sufficiently protected and backed up and We are not liable for any failure of data backups, storage devices or cloud storage services.
- 5.3 Where We supply any Software or Services for You at Relevant Premises, You shall indemnify Us and keep Us indemnified against any Loss arising out of the physical injury or death of any of Our Personnel arising in any way from Your provision of defective equipment, Your failure to provide a safe system of work or otherwise by reason of any negligent act or default by You or Your Personnel.
- 5.4 Subject to Clause 5.6, Our total aggregate liability for all Losses incurred or suffered by You arising under or in connection with the Contract will be limited to one hundred per cent (100%) of all amounts paid by You under the Contract in the previous twelve (12) months or, where an event giving rise to Loss occurs prior to You having paid any amounts to Us a sum equivalent to amounts invoiced or payable for the then current month.
- 5.5 Subject to Clause 5.6 (a) and (b), neither Party shall be liable to the other for the other Party's Consequential Loss, howsoever arising.
- 5.6 Nothing in the Contract limits or excludes a Party's liability
- (a) to the extent that it cannot be legally limited or excluded by Applicable Law;
  - (b) for Losses suffered by the other Party arising out of the first Party's (or its Personnel's) fraud or fraudulent statement and
  - (c) for death or personal injury arising out of its negligence or that of its Personnel.

## **7.0 PRICE & PAYMENT**

- 7.1 The Prices are specified in the Contract or as otherwise agreed between the Parties.
- 7.2 You must pay Us in full the Prices specified in the Contract or as otherwise agreed between You and Us in within thirty (30) days of submission to You of the invoice or such other period as may be specified in the Contract.
- 7.3 Payment shall be made by on-line bank transfer. Our bank account details are set out in the Contract.
- 7.4 Charges for any licences, subscriptions or the like (and renewals thereof) which are sourced by Us on Your behalf from Related Service Providers shall be paid by You in advance of receiving them from Us.

- 7.5 If You fail to make a payment due to Us under the Contract by the applicable due date for payment, without limiting Our other remedies under the Contract, You shall pay interest on the overdue sums. Interest will accrue from the due date until payment of the overdue sum is made to Us. Interest under this Clause 7.5 will accrue at four per cent (4%) a year above the Bank of England's base rate from time to time, but at four per cent (4%) a year for any period when that base rate is below zero per cent (0%).
- 7.6 If You fail to make a payment due to Us under the Contract by the due date for payment, without limiting Our other remedies under the Contract, We have the right to suspend the supply of the affected Software and Services.
- 7.7 All amounts due under the Contract must be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Applicable Law).
- 7.8 If You are required to make any deduction or withholding by Applicable Law then the amount payable shall be increased by such amount as is necessary to make the actual amount received (after such deduction or withholding) equal to the amount that would have been received by Us had no deduction or withholding been required.
- 7.9 VAT
- 7.9.1 All payments under this Contract exclude amounts in respect of VAT which, if applicable, will be paid in addition at the relevant rate from time to time.
- 7.9.2 Where We have undercharged You the VAT that should have been due on under an invoice, You will be liable to pay Us the outstanding VAT immediately.
- 7.9.3 Where We have overcharged You VAT, We shall refund You the amount that You have overpaid within a reasonable period of time from when We are made aware of the overpayment.
- 7.10 IR35 Legislation
- Notwithstanding anything in the Contract to the contrary, the following provisions shall apply in respect of IR35 legislation:
- (a) Both Parties shall comply with their IR35 legislation obligations.
  - (b) In the event that an "inside IR35" Status Determination Statement is made by HMRC in respect of any person assigned to the Services by Us, the Charges relating to that person shall be subject to change to take account of and cover all relevant employment taxes, statutory payroll deductions, Employer's NI and the like.
  - (c) If one of the Parties receives an IR35-related notification from HMRC in respect of the person allocated by Us to the Services, it shall immediately inform the other Party of such notification.
  - (d) You shall defend and indemnify Us from all actual or alleged liabilities, judgements, costs, claims, damages, and expenses incurred by Us as a result of the Your acts or omissions and those of your Personnel in respect of Your and their IR35 obligations.
- 7.11 Related Service Provider Price
- You acknowledge that the Price may be subject to change if a Related Service Provider increases the Price of its software or services that are used to provide the Software and Services under or in connection with the Contract.

## **8.0 INTELLECTUAL PROPERTY RIGHTS**

- 8.1 All intellectual property rights in or arising out of or in connection with the Software and Services (other than intellectual property rights in any materials provided by You) are and will be owned by Us or Our licensors.
- 8.2 Should any intellectual property rights in or arising out of, or in connection with the Software and Services (other than intellectual property rights in any materials provided by You) vest in You as a result of the Contract, You agree to assign to Us with full title guarantee (including by way of present assignment of future intellectual property rights) all intellectual property rights in or arising out of, or in connection with the Software and Services. You shall, at Our request, execute (and procure that third parties execute) all documents requested by Us so as to confirm Our title in such intellectual property rights

- 8.3 Subject to any specific restrictions or other applicable terms in business. You shall not sub-licence, assign or otherwise transfer the rights granted in this Clause 8.3.
- 8.4 You shall grant Us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by You for the term of the Contract for the purpose of providing the Software and Services to You'

## **9.0 DATA PROTECTION AND DATA PROCESSING**

- 9.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 9.0 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 9.2 Both Parties acknowledge that for the purposes of the Data Protection Legislation, You are the Controller and We are the Processor (where Controller and Processor have the meanings as defined in the Data Protection Legislation).
- 9.3 You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data (as defined in the Data Protection Legislation) to Us for the duration and purposes of the Contract.
- 9.4 We shall, in relation to any Personal Data processed in connection with the performance by Us of Our obligations under the Contract:
- (a) process that Personal Data only on Your written instructions unless We are required by any Applicable Laws, in which case, We shall promptly notify You of this before performing the processing required by the relevant Applicable Laws unless they prohibit Us from so notifying You;
  - (b) ensure that We have in place appropriate technical and organisational measures, reviewed and approved by You, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (which measures may include, where appropriate, (i) pseudonymising and encrypting Personal Data, (ii) ensuring confidentiality, integrity, availability and resilience of Our systems and services, (iii) ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and (iv) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by Us);
  - (c) ensure that all of Our Personnel who have access to and/or who process Personal Data are obliged to keep the Personal Data confidential;
  - (d) not transfer any Personal Data to locations outside of the United Kingdom and the European Economic Area unless Your prior written consent (such consent not to be unreasonably withheld or delayed) has been obtained and the following conditions are fulfilled:
    - i. You or We have provided appropriate safeguards in relation to the transfer;
    - ii. the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
    - iii. We comply with Our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - iv. We comply with reasonable instructions notified to Us in advance by You with respect to the processing of the Personal Data;
  - (f) notify You without undue delay on becoming aware of a Personal Data Breach (as defined by the Data Protection Legislation);

- (g) notify You of any communication from a Data Subject regarding (i) the processing of Personal Data or (ii) any communication from a supervisory authority relating to any obligation under the Data Protection Legislation in respect of the Personal Data and, taking into account the nature of the processing and information available to Us, reasonably assist You by applying appropriate technical and organisational measures, insofar as this is possible, to assist in fulfilling Your obligation to respond to requests for exercising the Data Subject's rights;
- (h) assist You with Your obligations under the GDPR to perform an assessment of the impact of the envisaged processing operations on the protection of Personal Data, taking into account the nature of the processing and information available to Us;
- (i) make available to You on request and with costs to be borne by You all information necessary to demonstrate Our compliance with this Clause 9.0 and with Our duties as Processor under the GDPR;
- (j) at Your written direction, delete or return Personal Data and copies thereof to You on termination of the Contract unless required by Applicable Law to store the Personal Data.

9.5 You hereby consent to our appointment of third party processors of Personal Data under the Contract. We confirm that We have entered, or (as the case may be) will enter with any third party processors, into a written agreement incorporating terms which are substantially similar to those set out in this Clause 9.0. As between You and Us, We shall remain fully liable for all acts or omissions of any third party processor appointed by Us pursuant to this Clause 9.0.

9.6 For the purposes of the GDPR, the processing of Personal Data to be carried out by Us on Your behalf in connection with the above-mentioned agreement shall be as follows:

- (a) Subject Matter and Duration of Processing: For the delivery of the Software and Services;
- (b) Nature and purpose of processing: As necessary for the delivery of the Software and Services;
- (c) Type of Personal Data: Names: contact details and such other data as is provided by You or on Your behalf in the context of Your receipt of the Software and Services
- (d) Categories of Data Subject: Your employees, contractors and other nominated end users of the Software and Services.

## 10.0 CONFIDENTIALITY

10.1 Each Party undertakes that it shall not at any time during the Contract, and thereafter, disclose to any person any Confidential Information, except as permitted by Clause 10.2.

10.2 Each Party may disclose the other Party's Confidential Information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, sub-contractors or advisers to whom it discloses the other Party's Confidential Information comply with this paragraph (a) and
- (b) as may be required by Applicable Law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under the Contract.

## 11.0 ASSIGNMENT, SUBCONTRACTING

### 11.1 Assignment

11.1.1 Save as specifically permitted in Clause 11.1.2 or elsewhere in the Contract, neither You or We may assign the benefit of any part of the Contract without the written consent of the other.

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

### 11.2 Subcontracting



- 11.2.1 Save as permitted by Clause 2.2, You and We will not delegate the performance of the respective obligations of You and Us to a third party without the prior written consent of the other (not to be unreasonably withheld or delayed).
- 11.2.2 You consent to Us delegating the supply of the Software and Services We have agreed to supply to You under the Contract and You consent to Us from time to time using consultants that are not full-time staff of Us and Related Service Providers to deliver part or all of the Software and Services to You.
- 11.2.3 We will be responsible for all acts and omissions of Our sub-contractors and the acts and omissions of those employed or engaged by Our sub-contractors as if such acts and omissions were Our own.

## **12.0 NON-SOLICITATION**

- 12.1 You shall not, and You shall procure that Your Personnel shall not, during the term of the Contract and for twelve (12) months following the termination or expiry of the Contract either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from Our employment any of Our employees who at the time of such solicitation or enticement is or was engaged by Us under or in connection with the Contract in the twelve (12) months immediately preceding such solicitation or enticement.
- 12.2 If You employ a person in breach of Clause 12.1 (**Solicited Employee**), then without prejudice to any of Our other rights or remedies, You shall on demand pay an amount equivalent to 30% of the gross annual salary or annual contract fees of the Solicited Employee, being such salary or fees in place immediately prior to such solicitation or enticement.

## **13.0 DISPUTES**

- 13.1 Any dispute which may arise between the Parties concerning the Contract shall be determined as provided in this Clause 13.0.
- 13.2 For the purpose of this Clause 13.0, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.
- 13.3 Unless the Contract has already been terminated by the date of the notice of dispute, We shall, in every case, continue with the supply of the Software and Services regardless of the nature of the dispute and You shall continue to make payments (excluding any disputed sums) in accordance with the Contract.
- 13.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this Clause 13.4 shall be extendable by mutual agreement):
- (a) within two (2) days, Our project manager and Your representative shall meet to attempt to settle the dispute;
  - (b) if Our project manager and Your representative are unable to reach a settlement within seven (7) days from the date of service of the notice, the managing directors of each of the Parties shall meet within the following seven (7) days to attempt to settle the dispute; and
- 13.5 if no settlement results from the meeting specified in Clause 13.4 (b), for the following twenty eight (28) days the Parties shall attempt to settle the dispute by reference to a mutually agreed independent expert for mediation.

## **14.0 TERMINATION**

- 14.1 The Contract may be terminated by Us in the following circumstances:
- (a) should any sums due to Us under the Contract remain unpaid for a period of sixty (60) days or more;
  - (b) in the event that You fail to provide the staff that We supply to You under the Contract or any staff that are working at Relevant Premises, with a safe system of work or if You request that a member of Our Personnel works in conditions or with equipment which are in any way unsafe or hazardous;

- (c) where You fail to carry out any prerequisite work that needs to be completed at the Relevant Premises by You before We are able to implement and/or install any Software and Services, where We have specified to You and agreed a timeframe for the prerequisite works to be completed, and You fail to have such works completed by the agreed date without giving Us at least fourteen (14) days' notice of the delays;
  - (d) You become subject to a Insolvency Event; and
  - (e) in accordance with Clause 4.4.2.
- 14.2 You may terminate the Contract at any time if all Your Software and Services have expired or have been terminated in accordance with the Contract and We do not supply any Software or Services to You under the Contract at the relevant time.
- 14.3 You may terminate individual Software and Services or any affected element or part as set out in the these Terms and Conditions or the Service Specific Terms for the applicable Software or Services.
- 14.4 You may terminate any individual Software and Services or any affected element or part, if an act or omission by or on behalf of Us means that:
- (a) We commit a material breach in respect of any of Our obligations relating to the applicable Software and Services that is incapable of remedy; or
  - (b) We commit a material breach in respect of any of Our obligations relating to the applicable Software and Services that is capable of remedy and We fail to remedy or procure the remedy of the breach within thirty (30) days of Your request for Us to do so,
- provided that the matter has first been referred to the resolution procedure referred to in Clause 13.0 and You have not found the outcome satisfactory.
- 14.5 In any of the circumstances in Clause 14.1 n which We may terminate the Contract, We may instead terminate any element or part of the Software and Services.
- 14.6 Where We terminate all or part of Contract pursuant to Clause 14.1 as a result of Your acts or omissions, We will no longer be under any obligation to do any work for You in relation to the terminated parts of the Contracts, and You will immediately become liable to pay Us all sums which You owe Us for the terminated Software and Services. Additionally, You will pay Us a reasonable sum representing the work We have done up to the date of termination in relation to the terminated Software or Services, which will be calculated to include the loss of anticipated profit for the terminated Software and Services.

## **15.0 FORCE MAJEURE**

Neither Party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes which were not reasonably foreseeable and beyond its reasonable control.

## **16.0 NOTICES**

- 16.1 All notices given pursuant to this Contract and Orders made thereunder shall be in writing and sent by registered mail, delivered by hand or sent by e-mail.
- 16.2 The name and addresses of the Parties' representatives to whom the notices will be issued are set out in the Contract.
- 16.3 Notices sent by registered mail will be deemed served on receipt of a signature for acceptance and notices sent by email will be deemed to be served on transmission subject to evidence of a valid email transmission receipt.
- 16.4 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (b) if sent by post or by another next working day delivery service, at the time recorded by the deliverer; and

- (c) if sent by e-mail, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.

In this Clause 16.4, business hours means 9:00 am to 5:00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.

## **17.0 MISCELLANEOUS PROVISIONS**

### **17.1 Entire Agreement**

17.1.1 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17.1.2 Both Parties acknowledge that in entering into the Contract they do not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

### **17.2 Changes**

Except as set out in these Terms and Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the Parties.

### **17.3 Waiver**

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### **17.4 Severance**

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

### **17.5 Provisions Surviving the Contract**

Termination or expiry of the Contract and/or Your acceptance of the Services or any parts thereof shall not release the Parties from obligations which expressly or by their nature survive the Contract or extend beyond the Contract termination, expiry and any acceptance of the Services.

### **17.6 No Partnership or Agency**

17.6.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute one Party the agent of the other Party, or authorise a Party to make or enter into any commitments for or on behalf of the other Party

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

### **17.7 Third Party Rights**

Unless it expressly states otherwise, a person who is not a party to the Contract will not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

### **17.8 Governing Law and Jurisdiction**

17.8.1 This Contract and any dispute or claim shall be governed by and construed in accordance with the law of Scotland.

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

**APPENDIX**  
**SERVICE SPECIFIC TERMS**

**1. MICROSOFT CLOUD SERVICES (CSP)**

**1.1 General**

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

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

**1.2 Description and Microsoft Licenses**

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

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

**1.3 Additional Services**

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

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

**1.4 Cancellation**

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

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

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

**2. CONSULTING SERVICES**

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

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

### **3. DEVELOPMENT SERVICES**

#### **3.1 General**

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

#### **3.2 Description**

3.2.1 We will provide You with the Development Services agreed between You and Us from time to time in accordance with Good Industry Practice.

3.2.2 The Price for the Development Services will be on a time and materials basis. Any timelines and costs given for Development Services are to be considered estimates.

#### **3.3 Development Services Time bank**

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

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

### **4. SUPPORT AND MANAGED SERVICES**

#### **4.1 General**

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

#### **3.2 Description**

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

4.2.2 We will provide You with the Support and Managed Services in accordance with Good Industry Practice and any applicable separate specific Services Agreement from time to time.

4.2.3 The Price for the Support and Managed Services will be as set out or otherwise referred to in the separate specific Services Agreement.

#### **4.3 Duration**

The minimum term for Support and Managed Services will be one (1) year from the date of commencement of the Support and Managed Services. Thereafter, the Support and Managed Services will automatically renew for a subsequent twelve (12) month period at each anniversary unless and until terminated by You providing notice of Your intention not to renew the Support and Managed Services not less than ninety (90) days prior to the next anniversary of the Support and Managed Services.

#### **4.4 Time Bank**

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

4.4.2 If the Support and Managed Services expire and You choose not to renew Your Support and Managed Services, We reserve the right to remove any remaining balance at any time on or after the expiration.

4.4.3 If You terminate the Support and Managed Services as a result of any material breach by Us in respect of any of Our obligations relating to the Support and Managed Services, We will refund any unused days in Your Support and Managed Services Time Bank as at the date of completion or termination upon request by You.