



Smart IT Support Ltd and Smart Office Technology Ltd

## **Master Services Agreement**

Version 1.1

April 2022

# Terms and Conditions

Any use and/or access of any of the Services by or on behalf of the Customer amounts to acceptance in full of these terms and conditions and the agreement by the Customer to all matters set out in the Contract.

## IT IS HEREBY AGREED

### 1. Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement:

**Affiliate:** in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

**Applicable Data Protection Laws:** means the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

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

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

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

**Charges:** the sums payable for the Services as set out in an Order Form.

**Control:** the beneficial ownership of more than 50% of the issued share capital of a company, and controls, controlled and the expression change of control shall be construed accordingly.

**Customer's Equipment:** 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 including any such items specified in an Order Form and any such items purchased or leased by the Customer under an Order Form.

**Customer Materials:** 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 the Supplier in connection with the Services, including the items provided pursuant to clause 5.1(e).

**Customer Personal Data:** any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer details of which are included in an Order Form.

**Deliverables:** any output of the Services to be provided by the Supplier to the Customer as specified in an Order Form.

**Equipment:** the equipment listed in an attachment to an Order Form.

**Intellectual Property Rights:** 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 Form:** an order form describing the services to be provided by the Supplier, the timetable for their performance and the related matters listed in the Order Form.

**Services:** the services described in an Order Form (and no other services).

**Service Hours:** the period from 8.30 am to 5.00 pm on any Business Day.

**Site:** the site detailed in an Order Form to which Equipment or, as the case may be, Services are to be provided.

**Software:** the third party software detailed in an Order Form.

**Supplier:** Will be the Smart IT group of companies, these being Smart IT Support Limited incorporated and registered in England and Wales with company number 06550863 whose registered office is at H26 Eleventh Avenue North, Team Valley Trading Estate, Gateshead, Tyne and Wear, United Kingdom, NE11 0NJ, and Smart Office Technology Limited incorporated and registered in England and Wales with company number 08939587 whose registered office is at 7 Millfield Road, Whickham, Newcastle upon Tyne, United Kingdom, NE16 4QA.

**Supplier's contact email address:** contracts@smartitgroup.co.uk

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services, including any such items specified in an Order Form but excluding any such items which are the subject of a separate Order Form under which title passes to the Customer.

**Supplier Personal Data:** any personal data provided by the Customer which is not Customer Personal Data.

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

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

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

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

1.6 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 gender.

1.8 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.9 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.10 A reference to **writing** or **written** includes email.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.12 A reference to **this Agreement** or to any other agreement or document is a reference to this Agreement or such other agreement or document, in each case as varied or novated from time to time.

1.13 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 2. Commencement and duration

2.1 This Agreement shall commence on the date when it has been signed by the parties or, if earlier, the date on which goods and/or services are first provided by the Supplier and shall continue, unless terminated earlier in accordance with clause 13 (Termination), until either party gives to the other party written notice to terminate. Such notice shall expire on the completion of all Order Forms entered into before the date on which it is served.

2.2 If there are no uncompleted Order Forms as at the date notice to terminate is served under clause 2.1 such notice shall terminate this Agreement with immediate effect.

2.3 The parties shall not enter into any further Order Forms after the date on which notice to terminate is served under clause 2.1.

2.4 The Supplier shall provide the Services from the Contract Start Date specified in the relevant Order Form (or if none is stated or if such date is earlier, the date on which service provision begins) until:

- (a) Where a fixed term is specified in the Order Form, expiry of the fixed term; and
- (b) Where no fixed term is specified in the Order Form, until either party gives written notice to the other party of at least ninety days, such notice to expire at the end of a Minimum Period (which if not specified in the Order Form shall be thirty six months), the term of this Agreement being comprised of successive Minimum Periods.

2.5 The Customer acknowledges and agrees that if it treats the Agreement as at an end other than in accordance with the provisions of clause 2.4 or clause 13, the Supplier shall be entitled to invoice the Customer for the Charges that would have been payable for the remainder of the current Minimum Period, discounted for accelerated receipt.

2.6 The Customer further acknowledges and agrees that any cancellation of an Order Form at the request of the Customer shall be at the absolute discretion of the Supplier and may be subject to conditions.

### 3. Quotations and Order Forms

3.1 A quotation by the Supplier is not an offer. Quotations are valid for 30 days only and subject to withdrawal or revision at any time before signature of the Order Form by the Supplier. Except where the Order Form states that the Charges are fixed, the Charges will be based upon time spent in provision of the Services. Any fixed Charge shall be adjusted in accordance with the provisions of clause 7.

3.2 Each Order Form shall be agreed in the following manner:

- (a) the Customer shall ask the Supplier to provide any services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Order Form for the services requested;
- (b) following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
  - (i) inform the Customer that it declines to provide the requested services; or
  - (ii) provide the Customer with a draft Order Form.
- (c) if the Supplier provides the Customer with a draft Order Form pursuant to clause 3.2(b)(ii), the Supplier and the Customer shall discuss and agree that draft Order Form; and
- (d) the Customer shall esign the draft Order Form when it is agreed.

3.3 Once an Order Form has been agreed and signed in accordance with clause 3.2(d), no amendment shall be made to it except in accordance with clause 7 (Change control) or clause 17 (Variation).

3.4 Each Order Form shall incorporate the Schedules of this Agreement detailed in the Order Form and shall be part of this Agreement and shall not form a separate contract to it.

#### 4. Supplier's responsibilities

4.1 The Supplier shall provide the Services, and deliver the Deliverables to the Customer, in accordance with an Order Form in all material respects.

4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in an Order Form but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.

4.3 The Supplier shall use reasonable endeavours to observe all health and safety and security requirements that apply at any Site and that have been communicated to it under clause 5.1(f), provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.

#### 5. Customer's obligations

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) comply with any applicable practices and procedures of the Supplier;
- (c) appoint a manager in respect of the Services to be performed under each Order Form, such person as identified in the Order Form. That person shall have authority to contractually bind the Customer on all matters relating to the relevant Services (including by signing Change Orders);
- (d) provide, for the Supplier, 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 the Supplier including any such access as is specified in an Order Form and, where applicable, working space and adequate facilities including electrical outlets within a reasonable distance of the Equipment;
- (e) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under an Order Form or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete;
- (f) inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises;
- (g) ensure that all the Customer Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant UK and international standards or requirements;
- (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer 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;
- (i) keep, maintain and insure the Supplier's Equipment in accordance with the Supplier's instructions from time to time and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation; and
- (j) comply with any additional responsibilities of the Customer as set out in the relevant Schedule and/or Order Form.

5.2 If the Supplier's performance of its obligations under this Agreement 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, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

5.3 The Customer shall indemnify and keep indemnified the Supplier against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with its use of the Services and the Customer Equipment.

#### 6. Non-solicitation and employment

6.1 The Customer and its Affiliates shall not, without the prior written consent of the Supplier, at any time from the date on which any Services commence to the expiry of 12 months after the completion of such Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of such Services.

6.2 Any consent given by the Supplier in accordance with clause 6.1 shall be subject to the Customer paying to the Supplier a sum equal to the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

#### 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 relevant **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:

- (a) the Services;
- (b) the Charges;
- (c) the timetable for the Services; and
- (d) any of the other terms of the relevant Order Form.

7.2 If the Supplier 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:

- (a) it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
- (b) the Supplier shall, as soon as reasonably practicable after receiving the information at clause 7.3(a), provide a draft Change Order to the Customer.

7.4 If the parties:

- (a) agree to a Change Order, they shall esign it and that Change Order shall amend the relevant Order Form; or
- (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 26.

7.5 The Supplier 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 the Supplier's standard daily rates.

#### 8. Charges and payment

8.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges on the Payment Terms (or if none are specified in the Order, within 30 days of invoice date). The Charges are not refundable.

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

- (a) the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked during Service Hours and any part day shall be charged as a full day;
- (b) the Supplier shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for any time worked by individuals whom it engages on the Services outside Service Hours; and
- (c) the Supplier shall upon request provide details of time spent by each individual whom it engages on the Services and the Supplier shall indicate the time spent 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:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and
- (b) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are set out in the Order Form or approved by the Customer in advance from time to time.

8.4 The Supplier reserves the right to annually adjust the service price in accordance with changes in the UK Consumer Price Index (CPI) plus 3.9%, as published by the Office for National Statistics or its successor. In the event of such adjustment, the Supplier shall provide the Customer with a 30-day notice of the revised Charges, notice can be provided with your monthly invoice. During this 30-day period, the Customer may terminate this Agreement by providing written notice to the Supplier. However, if the price increase is equal to or below the percentage change in CPI + 3.9%, the Customer shall not have the right to terminate the Agreement during this period. The adjusted Charges shall take effect on the expiry of the 30-day notice period and shall remain in force until the subsequent adjustment. It is understood that the service price shall not be adjusted downward, and any increase in the CPI resulting in a negative percentage change shall be treated as zero for the purposes of this provision.

8.5 The Supplier retains the right to adjust any Charges at any time on 30 days' notice to the Customer. In the event of a Charge adjustment for reasons other than CPI, the

Customer shall be entitled to terminate this Agreement by notice to the Supplier at any time in that 30 day period.

8.6 The Supplier shall invoice the Customer for the Charges at the intervals specified in the Order Form. If no intervals are so specified, the Supplier shall invoice the Customer at the start of each month:

- (a) for Services to be performed during that month and any deposits due in respect of that month; and
- (b) for all other supplies, for supplies made in the previous month.

8.7 The Customer shall pay each invoice submitted to it by the Supplier for Services immediately upon receipt and all other invoices within 30 days of date of invoice to a bank account nominated in writing by the Supplier from time to time.

8.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this Agreement on the due date:

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%; and
- (b) without prejudice to its right to recover the Charges in full, the Supplier may suspend part or all of the Services until payment has been made in full.

8.9 All sums payable to the Supplier under this Agreement:

- (a) 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
- (b) 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).

## 9. Intellectual property rights

9.1 Ownership of all IPRs (including IPRs in the Deliverables) shall remain with the Supplier at all times but upon payment by the Customer of all Charges payable under this Agreement, the Supplier shall provide a copy of the compiled code to any software Deliverables to the Customer. No other IPRs shall transfer to the ownership of the Customer under this Agreement.

9.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors shall retain ownership of all IPRs in the Customer Materials; and
- (b) grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Agreement for the purpose of providing the Services to the Customer.

9.3 The Supplier:

- (a) warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall, subject to clause 12.6, indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all other reasonable professional costs and expenses) suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights arising out of, or in connection with, the receipt or use of the Services and Deliverables.
- (c) shall not be in breach of the warranty at clause 9.3(a), and the Customer shall have no claim under the indemnity at clause 9.3(b) to the extent the infringement arises from:
  - (i) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Services or any Deliverable;
  - (ii) any modification of the Services or any Deliverable, other than by or on behalf of the Supplier; and
  - (iii) compliance with the Customer's specifications or instructions.

9.4 The Customer:

- (a) warrants that the receipt and use in the performance of this Agreement by the Supplier, its agents, subcontractors or consultants of the Customer Materials shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, 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 Agreement of the Customer Materials.

## 10. Data protection

10.1 For the purposes of this clause 10, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.

10.2 Each party will comply with all applicable requirements of Applicable Data Protection Laws. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

10.3 The parties have determined that, for the purposes of Applicable Data Protection Laws:

- (a) the Supplier shall process any Customer Personal Data as processor on behalf of the Customer; and
- (b) the Supplier shall act as controller of any Supplier Personal Data.

10.4 Without prejudice to the generality of clause 10.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier and/or lawful collection of the same by the Supplier for the duration and purposes of this Agreement.

10.5 Without prejudice to the generality of clause 10.2, the Supplier shall, in relation to Customer Personal Data:

- (a) process that Customer Personal Data only on the documented instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;
- (b) implement technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- (c) ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
- (f) at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 10.5(f) Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
- (g) maintain records to demonstrate its compliance with this clause 10, and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

10.6 The Customer provides its prior, general authorisation for the Supplier to:

- (a) appoint processors to process the Customer Personal Data, provided that the Supplier:
  - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 10;
  - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
  - (iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
- (b) transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

## 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(a).

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

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's

rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and

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

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

## 12. Limitation of liability

12.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £200,000 (professional indemnity insurance); and £1,000,000 (public and product liability insurance). The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

12.2 References to liability in this clause 12 (Limitation of liability) include every kind of liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.4 The Customer agrees that it has sole responsibility for results obtained from the use of the Customer Equipment and/or Services by the Customer.

12.5 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.6 Subject to clauses 12.3 and 12.4 and to any alternative liability limit specified in an Order Form, the Supplier's total liability to the Customer:

- (a) where the claim relates to goods supplied under this Agreement, an amount equal to the Charges for those goods;
- (b) where the claim relates to the Services supplied under this Agreement, an amount equal to the Charges for those Services; or
- (c) for all other loss or damage which does not fall within another subclause of this clause, an amount equal to the sums paid under all Order Forms in the twelve months preceding the date of the claim.

12.7 Subject to clauses 12.3 and 12.4 (Liabilities which cannot legally be limited), this clause 12.7 specifies the types of losses that are excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

12.8 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4.1 (Supplier's responsibilities). In view of these commitments, 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 Agreement.

## 13. Termination

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

- (a) the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this Agreement 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 Agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (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 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) 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;

(e) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;

(f) 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 the other party (being a company, limited liability partnership or partnership) 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;

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

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

(i) 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;

(j) 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;

(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

(l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

13.2 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement or any Order Form or suspend its provision of Services with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment;
- (b) the Supplier has reasonable grounds to suspect that information provided by the Customer is inaccurate, not current, false, misleading or incomplete and/or that the Services are being used by the Customer in connection with any illegal activity; or
- (c) the Customer exceeds any allowances specified in the Order Form including in relation to space and bandwidth, memory and the central processing unit;
- (d) the Customer participates in unsolicited, commercial e-mailing; illegal access to other computers or networks; distribution of viruses or similar destructive activities; and other activities that the Supplier reasonably determines to be harmful to its other customers, operations, or reputation;
- (e) the Service is the subject of, legal action or threatened legal action, against the Supplier or any of its affiliates or partners;
- (f) the Supplier or its suppliers discontinue all or part of the Services; or
- (g) there is a change of Control of the Customer.

13.3 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement or any Order Form with immediate effect by giving written notice to the Customer if:

- (a) the Customer is in not in compliance with the law;
- (b) a third party brings a claim or threatens to bring a claim against the Supplier in respect of Customer Materials; or
- (c) the Customer misuses any Service.

## 14. Obligations on termination and survival

### 14.1 Obligations on termination

On termination expiry of this Agreement:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted or in relation to which the Supplier is entitled to invoice under clause 2.5, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping; and
- (c) the Supplier shall have no obligations to the Customer to store and/or transfer data of the Customer to the Customer or any third party.

### 14.2 Survival

- (a) On termination of this Agreement pursuant to clause 13, all existing Order Forms shall terminate automatically.
- (b) Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.



(c) Termination of this Agreement 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 agreement which existed at or before the date of termination or expiry.

## 15. Force majeure

15.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and interruption or failure of utility service.

15.2 Provided it has complied with clause 15.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

15.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

## 16. Assignment and other dealings

16.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

16.2 The Supplier may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

## 17. Variation

17.1 Subject to clause 7 (Change control), no variation of this Agreement 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 Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

18.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement 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 Agreement 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 Agreement 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

19.1 The rights and remedies provided under this Agreement 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 Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 21. Entire agreement

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

## 22. Conflict

If there is an inconsistency between any of the provisions of this Agreement and the provisions of a Schedule, the provisions of the Schedule shall prevail.

## 23. No partnership or agency

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

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

## 24. Third party rights

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 25. Notices

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

- (a) 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
- (b) sent by email to the address specified in the Order Form.

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

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or
- (c) if sent if sent by email, 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 25.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

25.3 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.

## 26. Dispute resolution procedure

26.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall promptly take all reasonable steps to discuss and settle the Dispute.

26.2 If the parties are not able to settle the Dispute then either party may refer the matter to Alternative Dispute Resolution and the other party shall participate in that Alternative Dispute Resolution in accordance with the nominated mediator.

26.3 If the Dispute is not resolved within a reasonable period, or either party fails to participate or to continue to participate fully in the mediation, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 28.

## 27. Governing law

27.1 This Agreement 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.

## 28. Jurisdiction

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

## SCHEDULE 1- Block Hour Support Services

### 1. Definitions

1.1 The following definitions apply in this Schedule:

**Critical Support Request:** anything that prevents a large number of staff from performing their day-to-day duties.

**SLA:** initial response to calls made to the support telephone number provided by the Supplier wherever practicable within 30 minutes in relation to each Critical Support Request.

**Extended Support Hours:** the hours detailed in the Order Form which fall within the following time periods: 7:00am – 8:30am and 5:00pm – 10:00pm on a Business Day and 9:00am – 17:00pm on a non-Business Day.

**Standard Support Hours:** the hours detailed in the Order Form which fall within the following time periods: 8:30am – 5:00pm on a Business Day

### 2. Provision of Services

2.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services during the Support Hours in the Order Form during the Minimum Period in accordance with the SLA.

### 3. Charges

3.1 The Supplier shall record time spent in providing the Services in hourly units for Services provided at the Customer's premises and in half-hourly units for remote Services. The Customer is entitled to receipt of the number of hours stated in the Order Form and any hours not used during the support period shall expire automatically at the end of the support period. Once those hours are exhausted, the Supplier shall be entitled to charge for any Services provided during Standard Support Hours at its normal hourly rate or 150% its normal hourly rate for Extended Support Hours.

## SCHEDULE 2- Hosted Server/Cloud Computing

### 4. Definitions

4.1 The following definitions apply in this Schedule:

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.

### 5. Provision of Services

5.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services for the term of the Order Form.

### 6. Availability

6.1 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

- (a) planned maintenance carried out where practicable outside normal business hours; and
- (b) unscheduled emergency maintenance.

### 7. Limited Warranty

7.1 The Supplier:

- (a) does not warrant that:
  - (i) the Customer's use of the Services will be uninterrupted or error-free; or
  - (ii) that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or
  - (iii) the Software or the Services will be free from Vulnerabilities or Viruses;
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

## SCHEDULE 3 - Domain Management

### 8. Renewal

8.1 The Supplier shall renew any Customer domain name under its control every year unless the Customer gives the Supplier at least 30 days' notice prior to the renewal date.

### 9. Transfer

9.1 The Supplier shall be under no obligation to transfer a domain name to a third party until such time that all sums due from the Customer to the Supplier are paid in full.

## SCHEDULE 4 - Equipment Rental

### 1. Customer obligations

1.1 The Customer shall:

- (a) not move the Equipment from the applicable Site without the prior written consent of the Supplier;
- (b) install the Equipment and provide all services to enable the Equipment to be used at the Site;
- (c) keep the Equipment in good repair and condition (reasonable wear and tear excepted) throughout the term of the Order Form and comply with all instructions for the use of the Equipment which are notified to the Customer by the Supplier;
- (d) keep the Equipment safe and protected against adverse weather as well as against risk of loss or theft while at the Customer's premises;

(e) not use the Equipment except for the purposes for which it is supplied by the Supplier, nor exceed the floor loading capacity of the Equipment (if any) specified in the list attached to this Order Form;

(f) ensure that all labels on the Equipment identifying it as the property of the Supplier are maintained in place throughout the term of this Order Form;

(g) upon request, give the Supplier access to inspect the Equipment during normal business hours;

(h) immediately notify the Supplier of any loss or damage occurring to the Equipment during the term of this Order Form;

(i) maintain insurance of the Equipment against fire, lightning, explosion and other similar risks during the term of this Order Form and provide the Supplier with details and evidence of that insurance upon request; and

(j) in the event of loss of or damage to the Equipment, repair or replace the Equipment at its cost.

### 2. Supplier obligations

2.1 The Supplier shall only be required to deliver and/or install the Equipment where expressly stated on the Order Form.

## SCHEDULE 5 – Equipment Sale

### 1. Equipment

1.1 The Equipment is described in the Supplier's catalogue as modified by any applicable specification.

1.2 The Supplier reserves the right to amend the specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

### 2. Quality

2.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Equipment shall:

- (a) conform in all material respects with their description and any applicable specification; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (c) be fit for any purpose held out by the Supplier.

2.2 Subject to paragraph 2.3, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that the Equipment does not comply with the warranty set out in paragraph 2.1;
- (b) the Supplier is given a reasonable opportunity of examining such Equipment; and
- (c) the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.

2.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty set out in clause 2.1 if:

- (a) the Customer makes any further use of such Equipment after giving notice in accordance with paragraph 2.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any specification supplied by the Customer;
- (d) the Customer alters or repairs such Equipment without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

2.4 Except as provided in this paragraph 2, the Supplier shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in paragraph 2.1.

2.5 This paragraph 2 shall apply to any repaired or replacement Equipment supplied by the Supplier.

### 3. Title and risk

3.1 The risk in the Equipment shall pass to the Customer on completion of delivery.

3.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment.

3.3 Until title to the Equipment has passed to the Customer, the Customer shall:

- (a) store the Equipment separately from all other Equipment held by the Customer so that it remains readily identifiable as the Supplier's property;

- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (c) maintain the Equipment in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
- (d) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
  - (i) the Equipment; and
  - (ii) the ongoing financial position of the Customer.

3.4 At any time before title to the Equipment passes to the Customer, the Supplier may require the Customer to deliver up all Equipment in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.

## SCHEDULE 6 – IT Support

### 1. Provision of Services

1.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services in relation to the Equipment in the United Kingdom during the Service Hours in accordance with the service levels in paragraph 4.

1.2 The Supplier shall be entitled to charge its standard hourly rates for Services provided outside Service Hours.

### 2. Exclusions

2.1 The Services do not include:

- (a) installation or maintenance of equipment and software other than the Equipment;
- (b) operating accessories including media such as tapes and disc packs or electrical work external to the Equipment;
- (c) the upgrading of any hardware or software.
- (d) Maintenance of any Equipment has not been used in accordance with manufacturer's instructions;
- (e) adjustment, repair or parts replacement required because of accident, neglect, misuse, improper programming, failure of electrical power, air conditioning, humidity control, transportation or causes other than normal use;
- (f) Equipment maintained or repaired by anyone other than the Supplier's personnel without the prior approval of Smart IT (such approval not to be unreasonably withheld);
- (g) Equipment removed from its initial installation location or is reinstalled without the approval of the Supplier;
- (h) Equipment that is more than 5 years old unless the Supplier has expressly agreed in writing to maintain that Equipment;
- (i) recovering files from failed hard drives or completing backups;
- (j) Equipment that in the Supplier's reasonable opinion has reached the end of its useful life.

2.2 If the Supplier agrees to provide any of the services listed above, it shall be entitled to charge its standard hourly rates for those services.

### 3. Preventive Maintenance And Remote Monitoring

3.1 Where an item of Equipment is a server and the Supplier has agreed to provide preventive maintenance and remote monitoring services, the Services will include the following:

- (a) Applying critical operating systems patches, as recommended by the Supplier.
- (b) Checking from time to time that any anti-virus and spyware software purchased by the Customer from the Supplier have the latest versions and definitions installed and updating where necessary.
- (c) Network administration for the creation, removal and updating of user accounts, shared folders and shared printers. the Supplier reserves the right to charge the Customer for this activity in the event that, in its sole opinion, the Supplier believes that the use of this part of the Service is excessive.
- (d) periodic remote polling of Servers to check that for:
  - (i) Exchange Server status there is no alert on the Server that this programme has not been responding for 5 minutes or more;
  - (ii) SMTP Server status there is no alert on the Server that this programme has not been responding for 5 minutes or more;
  - (iii) SQL server status there is no alert on the Server that this programme has not been responding for 5 minutes or more;
  - (iv) CPU usage there is no alert on the Server that this usage is equal to or greater than 95% of its capacity for 10 minutes or more;
  - (v) Memory usage there is no alert on the Server that this usage is equal to or greater than 95% of its capacity for 10 minutes or more;
  - (vi) Page file usage there is no alert on the Server that this usage is equal to or greater than 99% of its capacity for 10 minutes or more; and

- (vii) Disk usage there is no alert on the Server that this usage is equal to or greater than 90% of its capacity for 10 minutes or more.

3.2 If any of the parameters listed in paragraph 3.1(d) are exceeded the Supplier may attempt to correct the problem without notifying the customer. If this is not possible the Supplier may contact the Customer to discuss what steps the Customer wishes to take.

### 4. Service Levels

4.1 The Supplier shall wherever practicable respond to each emergency support request within four business hours of receipt and all other requests within forty eight hours.

4.2 The Supplier shall provide maintenance at the intervals necessary to keep the Equipment in good working condition.

### 5. Customers Obligations

5.1 The Customer shall obtain, keep and make available to the Supplier:

- (a) machine readable copies of all programs, data files and operating systems relating to the Equipment; and
  - (b) any installation media, program disks, product keys, details of serial numbers and licences and any other data provided by the Supplier and the Customer acknowledges that the Supplier is not responsible for any loss of such media and details including any resulting Customer inability to use its machine readable data.
- 5.2 The Customer will undertake:
- (a) normal back-ups of data and to have available disks, tapes or other media containing back-ups; and
  - (b) a back-up immediately prior to the provision of Services by the Supplier under this Schedule.

### 6. Replacement Parts

6.1 The Supplier will provide at cost, all parts and equipment modifications which the Supplier deems necessary for maintaining the Equipment in good operating condition. All parts will be furnished on an exchange basis and will be new equivalent standard parts of equal quality to the part(s) being replaced.

## SCHEDULE 7 – Third Party Software

### 1. Provision of Services

1.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Software and (only if stated on the Order Form) installation, backup and/or support of the Software.

1.2 The Supplier shall be entitled to charge its standard hourly rates for Services provided in relation to the Software outside the scope specified on the Order Form.

### 2. Software licence

2.1 The Customer agrees to comply with the terms of each licence applicable to the Software.

## SCHEDULE 8– Server Backup

### 1. Provision of Services

1.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the following backups in relation to the virtual machines detailed in the Order Form:

- (a) On commencement of the Services, a complete backup; and
- (b) complete partial, incremental and differential backups at the intervals specified in the Order Form Or, if no interval is specified, every twenty four hours.

1.2 The Supplier is under no obligation to retrieve on behalf of the Customer data which has been lost or corrupted.

## SCHEDULE 9 – Smart Security

### 1. Definitions

1.1 The following definitions apply in this Schedule:

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.



## 2. Provision of Services

2.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services detailed in the Order Form in relation to the email addresses listed in the attachment to the Order Form (as amended by agreement of the parties in writing from time to time).

2.2 The Services will be provided in accordance with each applicable specification attached to the Order Form.

## 3. Limited warranty

3.1 The Supplier:

- (a) does not warrant that:
  - (i) the Customer's use of the Services will be uninterrupted or error-free;
  - (ii) the Software and/or the Services will be capable of protecting against, responding to, or addressing all types of Virus and/or cyber-attack in all respects;
  - (iii) the Software or the Services will be free from Vulnerabilities;
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; or
- (c) is not responsible for the manner in which the Customer uses the Services and the consequences of that use.

## SCHEDULE 10 – Website Hosting

### 1. Provision of Services

1.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will provide the Services.

1.2 The Supplier shall be under no obligation to transfer a domain name to a third party until such time that all sums due from the Customer to the Supplier are paid in full and shall be entitled to charge a fee for such transfer.

1.3 The Supplier shall be entitled to monitor the Customer's website and at its discretion delete or modify its contents where such contents do not the opinion of the Supplier meet the requirements of law and/or good industry practice.

## SCHEDULE 11– Broadband Telecoms

### 1. Definitions

1.1 The following definitions apply in this Schedule:

**Telecom Services Provider:** the telecom services provider named in the Order Form, which term shall include any of its subsidiaries, agents or associates.

**Call Faults:** means interruption to the Services caused by a fault other than a Line Fault.

**Fault:** Call Faults and Line Faults.

**Line Fault:** faults which are remediable by the Telecom Services Provider.

### 2. Provision of Services

2.1 In return for payment of the Charges in accordance with the Payment Terms, the Supplier will, subject to satisfactory completion of any survey or other investigations that the Supplier in its absolute discretion deems necessary, provide the Services in accordance with the Service Care plan identified in the Order Form.

2.2 The Supplier will use reasonable endeavours to connect the Customer Equipment to the Telecom Services Provider services by the specified service commencement date, each as identified in the Order Form.

2.3 The Supplier gives no guarantee as to the specific telephone numbers that will be allocated to the Customer. Those numbers are not transferable by the Customer without express Supplier written consent.

## 3. customer equipment

3.1 Save to the extent caused by the Supplier's negligence, the Supplier shall have no liability for damage to the Customer Equipment resulting from the provision of the Services and the Customer shall be responsible for ensuring that the Customer Equipment is suitable and programmed, equipped, compatible and connected for receipt of services from the Telecom Services Provider in accordance with the Supplier's reasonable instructions and any other instructions or safety and security procedures applicable to the use of Customer Equipment.

3.2 At the Supplier's discretion and the Customer's cost, the Supplier may reprogramme any item of Customer Equipment to facilitate provision of the Services.

3.3 The Supplier may require the Customer to disconnect (in which case the Customer must do so promptly) or may itself disconnect any Customer Equipment if in the Supplier's reasonable opinion:

- (a) it does not conform to applicable standards, approvals or laws; or
- (b) it may cause injury to any person or material damage to property; or
- (c) it may materially impair the quality of the Services.

## 4. Suspension of services

4.1 The Customer acknowledges that if the Supplier exercises its rights to suspend the Services, the following may occur:

- (a) call-barring and/or restriction of calls to and/or from the Customer's system;
- (b) lines and other services may be designated "temporarily out of service"; and
- (c) services may be disconnected disrupting the Customer's ability to access the Telecom Services Provider's services.

4.2 The Customer further acknowledges that additional charges may apply and that the minimum periods for resumption of services are:

- (a) call-barring – 8 hours;
- (b) lines temporarily out of service – 48 hours; and
- (c) disconnected lines – 14 days (and new telephone numbers may apply).

## 5. Additional charges

5.1 The Supplier shall be entitled to charge its standard hourly rates for services provided outside the scope of the Services, including where:

- (a) the Supplier makes arrangements to visit the Site to address a Fault and is unable to obtain the necessary access to the Site; or
- (b) the Supplier undertakes work to correct a Fault but is not able to find the Fault, it is a Call Fault and/or it was caused by the act or omission of the Customer; or

5.2 Where Services are provided outside the normal working hours applicable to the Customer's Service Care Plan, the Supplier shall be entitled to charge the Customer in accordance with its standard charge tariff and in any event a minimum of £95 (plus VAT and applicable taxes).