

## PLATFORM AS A SERVICE CONTRACT ORDER

1. This Contract is made up of the following:

- (a) The Orders.
- (b) The Conditions.
- (c) The Schedules specified in the Order.

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

### Conditions

#### 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.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.

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

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

**Contract Year:** a period of 12 months (or such shorter period if this agreement is terminated earlier), commencing on the Commencement Date and/or each anniversary of the Commencement Date.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer Content:** all text, information, data, software, executable code, images, audio or video material, in whatever medium or form, inputted by the Customer, Authorised Users or the Supplier on the Customer's behalf for the purpose of using, developing or maintaining any application or using the Services or facilitating the Customer's or any End-User's use of the Services and the outputs from the inputs.

**End User:** any person the Customer permits access to use the Services.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory

requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**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.

**Initial Term:** the term of the agreement, as determined in accordance with the Order and clause 2.

**Order:** a detailed plan describing the services to be provided by the Supplier.

**Services:** the services as set out in the Order.

**Services Element:** any one of the Services namely: Backup as a Service; Desktop as a Service; Infrastructure as a Service; Disaster Recovery as a Service; or Connectivity as a Service (as applicable).

**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 but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

**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 confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

- 1.2 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.

- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 This agreement shall be binding on, and make available 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.
- 1.5 A reference to **writing** or **written** includes email.
- 1.6 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.

## **2. Commencement and duration**

- 2.1 This agreement shall commence on the Commencement Date and shall continue for the Initial Term, the term of the agreement shall automatically extend at the end of the Initial Term for 12 months (Extended Term), unless the parties agree in writing, no later than the 30 days before the end of the Initial Term, to terminate this agreement at the end of the Term. Unless terminated earlier in accordance with this clause or clause 12.1 (Termination), the agreement shall terminate automatically without notice at the end of the Extended Term.
- 2.2 The Customer may procure any of the Services by agreeing an Order with the Supplier pursuant to clause 3 (Orders).
- 2.3 The Supplier shall provide the Services from the date specified in the relevant Order.

## **3. Orders**

- 3.1 Each Order shall be agreed in the following manner:
- (a) the Customer shall ask the Supplier to provide any or all of the Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Order 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.
  - (c) if the Supplier provides the Customer with a draft Order pursuant to clause 3.1(b)(ii), the Supplier and the Customer shall discuss and agree that draft Order; and

(d) both parties shall sign the draft Order when it is agreed.

3.2 Once an Order has been agreed and signed in accordance with clause 3.1(d), no amendment shall be made to it except in accordance clause 16\_(Variation).

3.3 Each Order shall be part of this agreement and shall not form a separate contract to it.

#### **4. Supplier's responsibilities**

4.1 The Supplier shall, during the Term provide the Services to the Customer on and subject to the terms of this agreement.

4.2 The Supplier undertakes that the Services will be provided with reasonable skill and care.

4.3 The undertaking at clause 4.2 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 4.2. Notwithstanding the foregoing, the Supplier:

(a) does not warrant that:

- (i) the Customer's use of the Services will be uninterrupted or error-free; or
- (ii) the Services, Documentation and/or the information obtained by the Customer or any End-User through the Services will meet the Customer's or any End-User's requirements; or
- (iii) 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.

4.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

4.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

4.6 From time to time the Supplier may:

- (a) modify the Services by issuing updates; and
- (b) make new features, functionality, applications or tools available in respect of the Services, whose use may be subject to the Customer's acceptance of further terms and conditions,

and shall give the Customer prompt written notice of material modifications to the Services and any such new features, functionality, applications or tools.

## 5. Customer's responsibilities

The Customer shall:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by the Supplier,

in order to provide the Services, including Customer Content, security access information and configuration services;

- (b) without affecting its other obligations under this agreement, comply with all applicable laws and regulations, including any of those relating to the export of data and software, with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users and End Users use the Services in accordance with the terms and conditions of this agreement and shall be responsible for breach of this agreement caused or contributed to by any acts or omissions on the part of any Authorised User or End-User;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including provision of the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- (g) be solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss

or damage arising from or relating to the Customer's or any End-User's network connections or telecommunications links or caused by the internet;

- (h) as between the parties, be responsible for responding to all third party requests concerning the use of the Services by the Customer or any End-User.

## **6. Changes to this agreement**

- 6.1 The Supplier shall be entitled to change its fee rates by notifying the Customer at least ten Business Days before such change is to take effect. During the period from the date of notification to date of the change the Customer may reject any such change by terminating the Order.
- 6.2 The Supplier may, subject to clause 6.1, make changes to the provisions of this agreement from time to time. If the Supplier materially changes such provisions, the Supplier shall give the Customer five Business Days' notice before the changes take effect, during which time the Customer may reject any such change by terminating the Customer Account.
- 6.3 The Customer acknowledges and agrees that if it uses the Services after the date on which such provisions have changed, the Supplier will treat the Customer's use as acceptance of the changed provisions.

## **7. Customer, Content Marks and data protection**

- 7.1 The Customer (or its licensors) shall own all Intellectual Property Rights in and to all of the Customer Content and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Content.
- 7.2 The Customer shall engage all Authorised Users on terms that include an assignment of all Intellectual Property Rights in and to the relevant Application to the Customer and shall ensure that such terms are adhered to.
- 7.3 The Customer hereby grants to the Supplier a non-exclusive, non-transferable right during the term of this agreement to carry out any acts that would otherwise be restricted by any of the Customer's Intellectual Property Rights in the Customer Content and all Applications for the sole purpose of enabling the Supplier to provide the Services to the Customer in accordance with this agreement.
- 7.4 The Customer acknowledges and agrees that:
  - (a) the Supplier may include the Customer's name or the Customer's Marks in a list of the Supplier's customers in any medium or in any link from the Platform to the Customer's website; and

- (b) the Supplier may refer to the Customer, orally or in writing, as a customer of the Services for promotional, marketing and financial reporting purposes.

7.5 The parties acknowledge and agree that:

- (a) the Supplier is not responsible or liable for the deletion of or failure to store any the Customer Content, and other communications maintained or transmitted through use of the Services; and
- (b) the Customer is solely responsible for securing and backing up the Customer Content.

7.6 The parties acknowledge that:

- (a) if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation.
- (b) the personal data may be transferred or stored outside the EEA or the country where the Customer, the Authorised Users or the End Users are located in order to carry out the Services and the Supplier's other obligations under this agreement.

7.7 Without prejudice to the generality of clause 7.6, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf and, without limitation, the Customer shall ensure that all End Users have been informed of, and have given and maintained their consent to permit access, monitoring, use and disclosure of all End-User Content by the Customer or the Supplier in accordance with this agreement.

7.8 Without prejudice to the generality of 7.6, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**applicable laws**). Where the Supplier is relying on applicable laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the applicable laws unless those applicable laws prohibit the Supplier from so notifying the Customer;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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 (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- (c) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
  - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation 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;
- (f) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this *clause 5* and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

7.9 The Customer consents to the Supplier appointing third party processors of personal data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written incorporating terms which are



substantially similar to those set out in this *clause 7.9* and in either case which the Supplier undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this *clause 7*.

- 7.10 Either party may, at any time on not less than 30 days' notice, revise this *clause 7* by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## **8. Third Party Providers**

The Customer acknowledges that the Services may in part be provided by third party providers and that the Services enable or assist it or any the End-Users to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does, and the End Users do, so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer or any End-User (as the case may be), with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer or the relevant End-User (as the case may be) and the relevant third party, and not the Supplier. The Supplier recommends that the Customer and End Users refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **9. Charges and payment**

- 9.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.
- 9.2 The Supplier may increase the Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 9.3 The Supplier may increase the Charges in line with vendor price increases outside of its control.
- 9.4 In the event that the Supplier's electricity provider increases its prices, the Customer shall, from the date the Supplier notifies the Customer of such price increase, pay to the Supplier

a sum equal to the increase in the cost of electricity payable by the Supplier monthly in arrears following submission of an appropriate invoice by the Supplier.

- 9.5 The Supplier shall invoice the Customer for the Charges at the intervals specified, in the Order. If no intervals are so specified, the Supplier shall invoice the Customer at the end of each month for Services performed during that month.
- 9.6 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of the date of the invoice to a bank account nominated in writing by the Supplier from time to time.
- 9.7 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 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
  - (b) the Supplier may suspend part or all of the Services until payment has been made in full.
- 9.8 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).

## **10. Intellectual property rights**

- 10.1 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.
- 10.2 The Supplier:
- (a) warrants in so far as it is aware that the receipt, use and onward supply of the Services by the Customer shall not infringe the rights, including any Intellectual Property Rights, any rights of third parties to the extent that the infringement results from copying;

- (b) shall not be in breach of the warranty at clause 10.2(a), 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;
  - (ii) any modification of the Services, other than by or on behalf of the Supplier; and
  - (iii) compliance with the Customer's specifications or instructions.

### 10.3 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.

### 10.4 If the Customer is required to indemnify the Supplier under this clause 10, the Supplier shall:

- (a) notify the Customer in writing of any claim against it in respect of which it wishes to rely on the indemnity at or clause 10.3(b) (**IPRs Claim**);
- (b) allow the Customer, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Customer shall obtain the Supplier's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Customer with such reasonable assistance regarding the IPRs Claim as is required by the Customer, subject to reimbursement by the Customer of the Supplier's costs so incurred; and
- (d) not, without prior consultation with the Customer, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Customer considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Supplier into disrepute.

## **11. Confidentiality**

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents (and also, in the case of the Customer only, by the End Users) in breach of the terms of this agreement.
- 11.4 The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, except any third party subcontracted by the Supplier to perform services related to maintenance and back-up of Customer Content and Applications.
- 11.5 The above provisions of this clause 11 shall survive termination of this agreement, however arising.

## **12. Limitation of liability**

- 12.1 This clause sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer or any Authorised User or End User:
- (a) arising under or in connection with this agreement;
  - (b) in respect of any use made by the Customer or any End-User of the Services and Documentation or any part of them; and

- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

12.2 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer or any End-User, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer or any End-User in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement including, without limitation, of satisfactory quality, fitness for a particular purpose, non- infringement, performance, quality and merchantability;
- (c) the Services are provided to the Customer and the End Users on an "as is" basis.

12.3 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.
- (c) Any liability which cannot legally be limited.
- (d) For breach of clause 11.

12.4 Subject to clause 12.2 and clause 12.3:

- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, business interruption or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability, in any Contract Year, in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of each Service Element of this agreement shall be limited to the total Charges payable for that Service Element in such Contract Year.

### **13. Termination**

13.1 Without affecting any other right or remedy available to it, the Customer may terminate a Service Element with immediate effect by giving written notice to the other party if the

Supplier commits a material breach of that Service Element and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so.

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

- (a) Customer 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 14 days after being notified in writing to do so;
- (b) Customer 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; or
- (c) if the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

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

- (a) either party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (b) 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.

13.4 In the event of termination:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
- (c) without limiting the effect of clause 13.4(b), the Supplier may require the Customer immediately to return all copies of the Software, the Supplier's Confidential Information and any other materials or to erase the same from the Customer's computer and communications systems and devices used by the Customer (but not those used by any End-User), including such systems and data storage services provided by third parties (to the extent technically and legally practicable) in accordance with clause 7.8(f). The Customer may, at the

Supplier's request, be required to confirm in writing that all such copies have been returned or so erased;

- (d) the Supplier may destroy or otherwise dispose of any of the Customer Content and Applications in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Content and Applications. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Content and Applications;
- (e) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced;
- (f) any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement;
- (g) any outstanding balance becomes immediately due and payable.

#### **13.5 Survival**

- (a) Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- (b) Termination or expiry 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.

#### **14. Force majeure**

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, pandemic, epidemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or

subcontractors, provided that the Customer is notified of such an event and its expected duration.

## **15. Assignment and other dealings**

15.1 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.

15.2 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, provided that the Supplier gives prior written notice of such dealing to the Customer where reasonably practicable.

## **16. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **17. Waiver**

17.1 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.

17.2 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. Rights and remedies**

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

## **19. Severance**

19.1 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.

19.2 If any provision or part-provision of this agreement is deemed deleted under clause 19.1 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.



## **20. Entire agreement**

- 20.1 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.
- 20.2 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.

## **21. Conflict**

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

## **22. No partnership or agency**

- 22.1 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.
- 22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **23. Third party rights**

- 23.1 Unless it expressly states otherwise, 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.
- 23.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

## **24. Notices**

- 24.1 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.

- 24.2 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 24.2(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.
- 24.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **25. Counterparts**

- 25.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## **26. Governing law**

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.

## **27. Jurisdiction**

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.

This agreement has been entered into on the date stated at the beginning of it.

## **Schedule 1 Third Party Terms**

Customer shall comply with the attached terms so far as they are applicable and warrants and undertakes that it shall not act in any way that may cause the Supplier to be in breach of any of the following terms. Terms can be found at [www.nexstor.com/terms](http://www.nexstor.com/terms).

## Schedule 2

### Severity Assessment

#### Priority and Impact Assessment

For the purposes of this document the following impact assessment will be used to determine the severity of an incident.

		IMPACT			
		Extensive (Region or Segment)	Significant (Business Unit, Department, Location)	Moderate (Few Users)	Minor (Single User)
PRIORITY	<b>Critical</b> Can no longer work	1 - Critical	1 - Critical	2 - High	2 - High
	<b>High</b> Can no longer perform primary work functions	1 - Critical	2 - High	3 - Medium	3 - Medium
	<b>Medium</b> Work functions impaired	2 - High	3 - Medium	3 - Medium	4 - Low
	<b>Low</b> Inconvenient	2 - High	3 - Medium	4 - Low	4 - Low

#### Severity Definitions

The following definitions apply to the priority and impact assessment detailed in section 4.1 of this document.

Severity	Definition
Severity 1 (Critical)	Critical business outage where an extensive number of users can no longer work or perform primary functions.
Severity 2 (High)	A small number of users cannot work or perform primary functions, or many users have an impaired ability to work.

Severity 3 (Medium)	A small number of users have work functions impaired or cannot perform primary functions.
Severity 4 (Low)	A small number of users have work functions impaired.

**Response Times**

The following response times will be adhered to in relation to the severity of the incident:

Severity	Response Time
Severity 1 (Critical)	30 minutes (in hours) <b>and</b> 60 minutes (out of hours)
Severity 2 (High)	4 hours (in hours)
Severity 3 (Medium)	8 hours (in hours)
Severity 4 (Low)	12 hours (in hours)

The Nexstor service desk aim to answer 95% of service desk telephone calls within 60 seconds during standard hours of operation.