

## TERMS OF SERVICE

These Terms of Service (**Terms**) govern provision of the Services (as defined below) by Totality Services London Ltd trading as WFH IT Support incorporated and registered in England and Wales with company number 06516074 whose registered office address is 17 Baldry Gardens, London, SW16 3DL (the **Supplier, us**) and you, the Customer.

These Terms comprise the agreement between the Supplier and the Customer (**Agreement**).

**Please read these Terms carefully before placing an order with us to subscribe to a Support Plan (as defined below). By ticking the box agreeing to these Terms you signify your agreement to be bound by these Terms.**

### 1 DEFINITIONS & INTERPRETATION

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

**Additional Fees:** any fees, charges and/or expenses additional to the Fees which are payable by the Customer.

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

**Commencement Date:** the go live support date as agreed between the Supplier and the Customer.

**Contract Date:** The date on which the Customer submits a New Client Form to the Supplier, or if such date is not a Business Day, the Business Day immediately succeeding such date.

**Contract Hardware:** computer hardware products including personal computers, laptop computers (including any manuals and/or instructions supplied therewith), by the Customer pursuant to this Agreement.

**Contract Rate:** the rate or rates from time to time published by the Supplier.

**Customer Data:** means all data, information, and other materials in any form (including derivatives) relating to the Customer (and/or its customers) and which may be accessed, generated, collected, stored or transmitted by the Supplier (or any sub-contractor of the Supplier) in the course of supply of the Services under this Agreement.

**Customer Hardware:** computer hardware products including personal computers, laptop computers, personal computers, keyboards, manuals and instructions owned or used by the Customer excluding Contract Hardware.

**Customer Software:** all computer programs and applications and related materials owned, licensed or used by the Customer in relation to the Services (excluding Supplier Software and Third Party Software).

**Fees:** the Support Plan Fee, the Professional Services Fee and the Hardware Fee.

**G Suite:** the suite of cloud computing, productivity and collaboration tools, software and products offered by Google LLC from time to time.

**Hardware Fee:** the fee payable by the Customer for the Hardware as contained in the Hardware Quote.

**Hardware Quote:** has the meaning given in clause 4.3.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighboring and related rights, moral rights, trade marks and service marks, 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 shall subsist now or in the future in any part of the world.

**IT Point of Contact:** the Customer's IT point of contact supplied to the Supplier when submitting the New Client Form or such individual as is notified by the Customer to the Supplier from time to time.

**Microsoft 365:** the range of cloud computing products offered by Microsoft Corporation from time to time.

**New Client Form:** the online form the Customer submits to the Supplier through the Website after signing up to subscribe to a Support Plan. An offline (Spreadsheet) version of the form is also available.

**Payment Services Provider:** GoCardless Ltd or such other payment services provider the Supplier may use from time to time.

**Professional Services:** the professional services as set out in Schedule 2.

**Professional Services Fee:** the fee payable by the Customer for the Professional Services as set out in the Professional Services Quote and calculated on a time and materials basis in accordance with the Contract Rate.

**Professional Services Quote:** has the meaning given in clause 5.5.

**Protected Data:** has the meaning given in paragraph 1 of Part A of Schedule 4

**Renewal Period:** each renewal period of this Agreement as provided in clause 2.2 or 2.3 as the case may be.

**Service Hours:** 09:00 to 18:00 local UK time each Business Day.

**Service Levels:** the service levels in respect of each Support Plan set out in Schedule 3.

**Standard Payment Terms:** payment by the Customer on or after the Business Day after the date of invoice by direct debit in accordance with the Payment Service Provider's terms of service into the bank account nominated in writing to the Customer by the Supplier from time to time.

**Sub-processor:** has the meaning given in paragraph 1 of Part A of Schedule 4.

**Supplier Software:** all computer programs, applications and related materials owned, licensed or used by the Supplier in supplying the Services (excluding Customer Software and Third Party Software).

**Support Plan Fee:** the fee payable by the Customer for supply of the Support Plan Services as set out on the Website.

**Supported Devices:** any Contract Hardware or Customer Hardware which is supported under the Support Plan purchased by the Customer pursuant to this Agreement.

**Supported Systems:** Windows 10 Pro Operating System or the latest two Mac Operating System releases (including future versions and patches, fixes, enhancements and modifications thereof), or any computer operating systems (including current and future versions and patches, fixes, enhancements and modifications thereof) as agreed in writing between the Supplier and the Customer, which are supported by the Supplier during the Term.

**Support Plans:** the Supplier's Standard Support Plan, Professional Support Plan and Premium Support Plan available to view at <https://wfhsupport.co.uk/plans> or any other website notified by the Supplier to the Customer from time to time and **Support Plan** shall be construed accordingly.

**Support Plan Services:** the services set out in Schedule 1 which are included in the Support Plan chosen by the Customer under this Agreement.

**Term:** the term of this Agreement as provided in clause 2.2 or clause 2.3 as the case may be.

**Third Party Software:** any software programs or applications supplied to the Customer by third parties and not by the Supplier.

**UK:** the United Kingdom of Great Britain and Northern Ireland excluding all Crown dependencies and British Overseas Territories.

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

**Website:** the Supplier's website accessible through <https://wfhitsupport.co.uk> or such other URL used by the Supplier from time to time.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.6 Any words following the terms **including** or **include** 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 or similar expression.
- 1.7 A reference to writing or written includes e-mail but not fax.
- 1.8 References to clauses and schedules are to the clauses and schedules of this Agreement.

## **2 COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall commence on the Contract Date.
- 2.2 If the Customer is subscribing to a Standard Plan or a Professional Plan, this Agreement shall continue for a period of 30 days from the Contract Date (**Standard/Professional Initial Term**) and thereupon shall automatically renew for successive periods of 30 days (each a **Standard/Professional Renewal Period**) until terminated by the Customer or the Supplier in accordance with clause 12 (**Standard/Professional Term**).
- 2.3 If the Customer is subscribing to a Premium Plan, this Agreement shall continue for a period of 12 months from the Contract Date (**Premium Initial Term**) and thereupon shall automatically renew for successive periods of 30 days (each a **Premium Renewal Period**) until terminated in accordance with clause 12 (**Premium Term**).

## **3 SUPPLY OF SUPPORT PLAN SERVICES**

- 3.1 The Supplier shall commence supply of the Support Plan Services on the Commencement Date.
- 3.2 The Supplier warrants that it shall supply the Support Plan Services to the Customer using reasonable care and skill and in accordance with the Service Levels.
- 3.3 The Supplier shall supply the Support Plan Services to the Customer remotely:
  - 3.3.1 in the case of Standard Plan or a Professional Plan, during the Service Hours throughout the Term; or
  - 3.3.2 in the case of a Premium Plan, 24 hours per day, 365 days per year.
- 3.4 The Supplier shall use reasonable endeavours to meet any performance dates in relation to the Support Plan Services but any such performance dates shall be estimates only and time shall not be of the essence for supply of the Support Plan Services.
- 3.5 The Support Plan Services supplied under this Agreement do not include the following services (which may be the subject of separate agreement):
  - 3.5.1 any services made necessary as a result of the Customer's or any third party's misuse or modification of any Supplier Software, Customer Software, Supported Devices, Contract Hardware, Customer Hardware or any other devices, equipment or materials;
  - 3.5.2 maintenance of any Contract Hardware, Customer Hardware, devices, materials or equipment that the Supplier considers, in its reasonable opinion, has reached the end of its economic life;
  - 3.5.3 any on-site or otherwise non-remote support;
  - 3.5.4 supply of any Professional Services pursuant to clause 5;
  - 3.5.5 any set up of any Microsoft 365 or G Suite enhancements and/or modifications on any Supported Devices, Customer Hardware, devices or equipment which is not complete on the Commencement Date (**Enhancements**); or
  - 3.5.6 support for:
    - 3.5.6.1 any servers or data storage devices (whether belonging to the Customer or a third party);
    - 3.5.6.2 any network hardware including firewalls, data switches, or wireless access points (whether belonging to the Customer or a third party) and associated management software;
    - 3.5.6.3 any issues in relation to internet connectivity including bandwidth limitations;
    - 3.5.6.4 any issues in relation to printers, scanners, photocopiers or other similar machines (whether belonging to the Customer or a third party);
    - 3.5.6.5 Third Party Software; or
    - 3.5.6.6 any operating system other than the Supported Systems.
- 3.6 The Supplier may withdraw support in respect of any Supported Systems during the Term at no liability to the Customer by giving 6 months' notice to the Customer. During and after expiry of such notice period the Supplier shall continue to supply the Support Plan Services less such withdrawn support in accordance with this Agreement until termination thereof howsoever arising.
- 3.7 The Support Plan Services do include:
  - 3.7.1 support for the Supported Systems;
  - 3.7.2 installation by the Supplier of any Third Party Software which in the Supplier's reasonable opinion is related to the Customer's business operations as approved and requested by the IT Point of Contact in writing; and

- 3.7.3 the transfer of Microsoft 365 licence invoicing from the Microsoft Corporation to the Supplier, if monthly invoicing is in place in respect of the Customer subscription to Microsoft 365 as at the Contract Date.
- 3.8 The Customer may request supply of any Enhancements by submitting a written request to sales@wfhitsupport.co.uk (**Enhancement Request**). The Customer shall ensure each and any Enhancement Request is complete and accurate. After receipt of an Enhancement Request, the Supplier shall send to the Customer a written quote containing a proposed date for supply of the Enhancements (**Enhancements Date**) and a description of the Enhancements the Supplier is prepared to supply to the Customer (**Enhancements Quote**).
- 3.9 Each and any Enhancement Quote shall constitute an invitation to treat, is valid for a period 30 days only from the date the Supplier sends it to the Customer and may be withdrawn by the Supplier at any time by notice to the Customer.
- 3.10 Acceptance of the Enhancement Quote by the Customer shall be deemed to be an offer from the Customer to the Supplier to purchase the Enhancements specified in the Enhancements Quote and the Customer acknowledges and agrees that the Supplier's fees for completion of the Enhancements shall be charged as Additional Fees.
- 3.11 A binding contract for purchase of the from the Supplier shall come into existence on the date the Supplier issues a written acknowledgment of its acceptance of the Enhancements Quote.
- 3.12 The Supplier warrants that it shall supply any Enhancements using reasonable care and skill.
- 3.13 The Supplier shall use reasonable endeavours to meet the Enhancements Date but such date shall be an estimate only and time shall not be of the essence for supply of any Enhancements.
- 3.14 The Customer shall:
- 3.14.1 co-operate with the Supplier in all matters relating to the Support Plan Services;
- 3.14.2 provide the Supplier, its officers and employees in a timely manner and at no charge such access to such Customer Software, Third Party Software, Customer Data, Customer Hardware, Supported Devices, Contract Hardware, devices, equipment, materials, premises, office accommodation and facilities as is requested by the Supplier;
- 3.14.3 provide in a timely manner any such documents, information, items or materials requested by the Supplier, and ensure that any such documents, information, items or materials are accurate and complete in all material respects;
- 3.14.4 be responsible for preparing the relevant Customer Software, Third Party Software, Customer Hardware, Contract Hardware, Supported Devices, Customer Data, devices, equipment, materials, premises, office accommodation and facilities for supply of the Support Plan Services; and
- 3.14.5 procure all its officers and/or employees which use Supported Devices to employ 2-step authentication when logging in to Microsoft 365 or G Suite.
- in each as is necessary for the Supplier to supply the Support Plan Services to the Customer under this Agreement.
- 3.15 The Support Plan Services are provided at the Customer's request and it is responsible for ascertaining that the Support Plan Services are suitable for its needs.
- 3.16 As part of supplying the Support Plan Services the Customer acknowledges and agrees that:
- 3.16.1 the Supplier shall have the right for the duration of the Term and for the purpose of providing the Services to possess and use administrator login details to all Supported Devices and to remove such administrator details from all Supported Devices; and
- 3.16.2 two of the Customer's officers or employees only shall be entitled to possess and use such administrator login details for the duration of the Term.
- 3.17 The Customer acknowledges and agrees that the minimum number of Supported Devices under any Support Plan to which it subscribes is ten (**Minimum Quantity**).
- 3.18 The Customer may request any quantity of devices to be added or removed (provided such removal does not result in the number of Supported Devices falling below the Minimum Quantity) at any time during the Term by submitting a written request specifying the type and quantity of such devices to be added or removed to helpdesk@wfhitsupport.co.uk (**Device Request**). The Supplier shall confirm receipt of the Device Request in writing. The Customer shall ensure each and any Device Request is complete and accurate.
- 3.19 After confirmation of a Device Request in accordance with clause 3.17, the Supplier shall procure that such devices as specified in the Device Request are added or removed as Supported Devices in accordance therewith. The Subscription Fee amount altered to reflect any such addition or removal of devices shall be contained in the invoice sent by the Supplier in accordance with clause 10 in the month succeeding the month in which such devices are added or removed.
- 3.20 The Supplier may at any time advertise new, additional services and/or software in relation to each and any Support Plan, which may be purchased by the Customer. Any supply of any such additional services and/or software by the shall be subject to variation of this Agreement in accordance with clause 23 and shall be governed by the terms of this Agreement, unless otherwise specified by the Supplier in any written quotation or proposal issued by the Supplier.
- 3.21 If the Supplier's performance of its obligations contained in this clause 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 the Supplier may have under this Agreement or at law, the Supplier may immediately suspend supply of the Support Plan Services without any liability to the Customer and the Customer shall be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by the Supplier, subject to the Supplier confirming such costs, charges and losses to the Customer in writing. Such losses shall include any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.
- 3.22 The Customer warrants that it shall not copy, modify, adapt, develop, decompile, reverse engineer, disassemble, create any derivative work, or carry out any act otherwise restricted by any Intellectual Property Rights subsisting in the Supplier Software, the Hardware or the Services.

#### **4 SUPPLY OF CONTRACT HARDWARE**

**This clause shall apply if the Customer decides to purchase Contract Hardware pursuant to this Agreement.**

- 4.1 The Customer may purchase Contract Hardware from the Supplier at any time on or after the Commencement Date up until termination of this Agreement (however that arises).
- 4.2 If the Customer wants to purchase Contract Hardware from the Supplier in accordance with clause 4.1, it shall send a written request to the Supplier specifying the type and quantity of Contract Hardware it wants to purchase (**Hardware Purchase Request**) to sales@wfhitsupport.co.uk. The Customer shall ensure each and any Hardware Purchase Request is complete and accurate.
- 4.3 After receipt of the Hardware Purchase Request, the Supplier shall send the Customer a written quote containing:
- 4.3.1 a proposed delivery date of the Hardware by the Supplier or its carrier (**Hardware Delivery Date**);
- 4.3.2 the Hardware Fee; and
- 4.3.3 a description of type and quantity of Hardware the Supplier is prepared to sell to the Customer

**(Hardware Quote).**

- 4.4 Each and any Hardware Quote shall constitute an invitation to treat, is valid for a period 30 days only from the date the Supplier sends it to the Customer and may be withdrawn by the Supplier at any time by notice to the Customer.
- 4.5 Acceptance of the Hardware Quote by the Customer shall be deemed to be an offer from the Customer to the Supplier to purchase the Contract Hardware specified in the Hardware Quote subject to this clause 4.
- 4.6 A binding contract for purchase of the Contract Hardware from the Supplier shall come into existence on the date the Supplier issues a written acknowledgment of its acceptance of the Hardware Quote (**Hardware Contract Date**).
- 4.7 On the Hardware Contract Date the Supplier shall sell with full title guarantee and the Customer shall purchase the Contract Hardware for the Hardware Fee.
- 4.8 The Customer shall be responsible for any physical installation of the Contract Hardware at the Customer's premises or any other location
- 4.9 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Contract Hardware as has not been delivered to reflect any increase in the cost to the Supplier which is due to market conditions or any factor beyond the control of the Supplier (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Contract Hardware which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 4.10 The Supplier shall use reasonable endeavours to deliver the Contract Hardware on the Hardware Delivery Date to the Hardware Delivery Address, but the Hardware Delivery Date is an estimate only and time is not of the essence as to the delivery of the Contract Hardware and the Supplier are not in any circumstances liable for any delay in delivery, howsoever caused.
- 4.11 Any samples, drawings, descriptive matter, or advertising produced and any descriptions or illustrations contained catalogues or brochures supplied with the Contract Hardware are produced for the sole purpose of giving an approximate idea of the Contract Hardware described therein and shall not form part of this Agreement or have any contractual force.
- 4.12 Any typographical, clerical or other error or omission in any sales literature, quote, price list, acknowledgement of acceptance, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 4.13 Delivery of the Contract Hardware shall be made during the Service Hours. The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's written request.
- 4.14 The Supplier shall not be obliged to deliver the Contract Hardware until it has received payment of the Hardware Fee in full and cleared funds in accordance with clause 10.
- 4.15 The Customer shall be responsible, at its sole cost, for preparing the Contract Hardware Delivery Address for delivery of the Contract Hardware and for the provision of all necessary access and facilities reasonably required to deliver the Contract Hardware. If the Supplier is prevented from carrying out delivery on the Hardware Delivery Date because no such preparation has been carried out, the Supplier may levy additional charges to recover the Supplier's loss arising from this event.
- 4.16 A representative of the Customer shall be present at the Hardware Delivery Address on delivery of the Contract Hardware (**Customer Representative**). On delivery, the Customer Representative shall inspect the Contract Hardware to ensure it is in good working order, complete and fit in every way for the purpose for which it is intended to be used by the Customer (save as regards any latent defects not reasonably apparent on inspection) (**Inspection**).
- 4.17 The Customer acknowledges and agrees that it shall be solely responsible for ensuring the Contract Hardware is fit for its purpose. The parties acknowledge and agree that all terms implied by sections 13 to and including 15 of the Sale of Goods Act 1979 are excluded from this Agreement.
- 4.18 The Customer shall be deemed to have accepted the Contract Hardware within one Business Day of Inspection in accordance with clause 4.16 provided the Customer has not exercised in writing its right of rejection in accordance with clause 4.19.
- 4.19 If on Inspection, the Customer is not satisfied the Contract Hardware complies with the requirements contained in clause 4.16, the Customer shall be entitled to reject the Contract Hardware by notice to the Supplier given within one Business Day of Inspection in which event:
- 4.19.1 ownership of and title in the Contract Hardware shall remain with the Supplier;
- 4.19.2 the Supplier shall use reasonable endeavours to obtain for the Customer any refund available in respect of purchase of the Contract Hardware under this Agreement from the Contract Hardware manufacturer or the supplier of the Contract Hardware to the Supplier (as the case may be); and
- 4.19.3 the Customer shall, at its sole cost, as specified by the Supplier in writing, return the Contract Hardware to:
- 4.19.3.1 the Supplier registered office address given in this Agreement;
- 4.19.3.2 the supplier of the Contract Hardware to the Supplier; or
- 4.19.3.3 the Contract Hardware manufacturer.
- 4.20 If the Customer fails to accept delivery of the Contract Hardware in accordance with clauses 4.16, 4.18 and 4.19 then:
- 4.20.1 delivery of the Contract Hardware shall be deemed to have taken place on the Hardware Delivery Date;
- 4.20.2 the Supplier may store the Contract Hardware until delivery takes place at the Customer's sole cost; and
- 4.20.3 if the Customer fail to accept delivery within three days of the Contract Hardware Delivery Date, the Supplier may, without any liability to the Customer, resell or otherwise dispose of all or part of the Contract Hardware.
- 4.21 The Supplier may deliver the Contract Hardware by instalments, which shall be invoiced and paid for separately in accordance with clause 10. Any delay in delivery or defect in any instalment shall not entitle the Customer to cancel any other instalment. The Supplier may also ship all Contract Hardware in a single shipment which the Customer shall be obliged to accept.
- 4.22 The Customer shall receive the benefit of any warranties given by the Contract Hardware manufacturer in respect of any Contract Hardware.
- 4.23 The Supplier shall not be liable for any damage to, destruction of, shortage of, or loss of the Contract Hardware in transit.
- 4.24 On or after delivery (or deemed delivery) the Supplier shall set up the Contract Hardware and install any and all software necessary for use and operation thereof (**Installation Service**) at no cost to the Customer.
- 4.25 The Supplier warrants it shall supply the Installation Service using reasonable care and skill.
- 4.26 The Supplier shall use reasonable endeavours to meet any performance dates set for supply of the Installation Service but any such dates shall be estimates only and time shall not be of the essence for supply of the Installation Service.
- 4.27 The Customer warrants that it shall not copy, modify, adapt, develop, decompile, reverse engineer, disassemble, create any derivative work, or carry out any act otherwise restricted by Intellectual Property Rights subsisting in the Contract Hardware.
- 4.28 The Contract Hardware shall be at the Supplier's risk until delivery (or deemed delivery) to the Hardware Delivery Address. The Supplier (or the carrier) shall off-load the Contract Hardware at the Customer's risk.

- 4.29 Ownership of the Contract Hardware shall pass to the Customer when the Supplier has received the Hardware Fee in full and cleared funds in accordance with clause 10. Risk in the Contract Hardware shall pass to the Customer on delivery (or deemed delivery).
- 4.30 If the Customer wants the Supplier to remotely configure any or all parts of the Contract Hardware to Supplier Software, Customer Software and/or Third Party Software approved in writing by the IT Point of Contract at no cost to the Customer after delivery (or deemed delivery), then the Customer shall send a written request to the Supplier for such configuration to helpdesk@wfhitsupport.co.uk. After receipt of such request, the Supplier shall send the Customer a written acknowledgement specifying a date on which the Supplier shall remotely configure such Contract Hardware in accordance with such written request (**Configuration Date**).
- 4.31 The Supplier warrants that it shall remotely configure the Contract Hardware pursuant to clause 4.30 using reasonable care and skill.
- 4.32 The Supplier shall use reasonable endeavours to remotely configure the Contract Hardware pursuant to clause 4.30 on the Configuration Date but the Configuration Date shall be an estimate only and time shall not be of the essence for remote configuration of the Contract Hardware pursuant to clause 4.30.
- 4.33 For the avoidance of doubt, the Supplier shall not provide any on-site otherwise non-remote configuration of any or all parts of the Contract Hardware.
- 4.34 The Customer shall indemnify and keep indemnified the Supplier on demand against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential loss, 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 by the Supplier arising out of or in connection with any claim made against the Supplier by a third party for death, personal injury or damage to property arising out of or in connection with defective Contract Hardware, to the extent that the defect in the Contract Hardware is attributable to the acts or omissions of the Customer, its officers, employees, agents or subcontractors.
- 4.35 The indemnity in clause 4.34 shall apply whether or not the Supplier has been negligent or at fault.
- 4.36 The Supplier shall be under no duty to mitigate the losses it claims under this indemnity in clause 4.34.

## 5 SUPPLY OF PROFESSIONAL SERVICES

**This clause shall apply if the Customer decides to purchase Professional Services pursuant to this Agreement.**

- 5.1 The Customer may purchase Professional Services from the Supplier at any time after the Commencement Date up until termination of this Agreement (however that arises).
- 5.2 If the Customer wants to purchase Professional Services from the Supplier in accordance with clause 5.1, then it shall send a written request specifying the type of Professional Services it wants to purchase (**Professional Services Purchase Request**) to sales@wfhitsupport.co.uk. The Customer shall ensure each and any Professional Services Purchase Request is complete and accurate.
- 5.3 After receipt of each and any Professional Services Purchase Request, the Supplier shall send the Customer a written document containing proposed date (**Scoping Date**) for a scoping exercise to establish the Supplier's proposed type of, timescale and cost in relation to, the Professional Services to be provided to the Customer (**Scoping Exercise**).
- 5.4 The Supplier shall use reasonable endeavours to perform the Scoping Exercise on the Scoping Date but the Scoping Date is an estimate only and time shall not be of the essence for performance of the Scoping Exercise
- 5.5 After completion of the Scoping Exercise the Supplier shall send the Customer a written quote containing:
- 5.5.1 the type of Professional Services the Supplier is prepared to supply to the Customer;
- 5.5.2 a timeline for completion of the Professional Services; and
- 5.5.3 the Professional Services Fee.
- (Professional Services Quote).**
- 5.6 Each and any Professional Services Quote shall constitute an invitation to treat, shall be valid only for a period of 30 days after the date it is issued by the Supplier and may be withdrawn by the Supplier by giving notice to the Customer.
- 5.7 Acceptance of each and any Professional Services Quote by the Customer shall be deemed to be an offer from the Customer to the Supplier to purchase supply of the Professional Services specified in such Professional Services Quote subject to this clause 5.
- 5.8 A binding contract for supply of the Professional Services shall come into existence on the date the Supplier issue a written acknowledgment of its acceptance of the Professional Services Quote (**Professional Services Contract Date**).
- 5.9 The Supplier shall commence supply of the Professional Services on the Professional Services Contract Date or another date as agreed between the Supplier and Customer in writing (as the case may be) (**Professional Services Commencement Date**).
- 5.10 The Supplier warrants that it shall supply the Professional Services to the Customer using reasonable care and skill.
- 5.11 The Supplier shall use reasonable endeavours to meet any performance dates in relation to the Professional Services, but any such performance dates shall be estimates only and time shall not be of the essence for supply of the Professional Services.
- 5.12 The Customer shall:
- 5.12.1 co-operate with the Supplier in all matters relating to the Professional Services;
- 5.12.2 provide the Supplier, its officers and employees in a timely manner and at no charge such access to such Customer Software, Customer Data, Supported Devices, Customer Hardware, Contract Hardware, devices, equipment, premises and facilities as is requested by the Supplier;
- 5.12.3 provide in a timely manner any such documents, information, items and/or materials requested by the Supplier, and ensure that any such documents, information, items and/or materials are accurate and complete in all material respects; and
- 5.12.4 be responsible for preparing the relevant Customer Software, Supported Devices, Contract Hardware, Customer Hardware, devices, equipment, premises and facilities for supply of the Professional Services.
- in each as is necessary for the Supplier to supply the Professional Services to the Customer under this clause.
- 5.13 If the Supplier's performance its obligations contained in this clause is prevented or delayed by any act or omission of the Customer or its agents, subcontractors or employees, then without prejudice to any other right or remedy the Supplier may have under this Agreement or at law the Supplier reserves the right to immediately suspend supply of the Professional Services without any liability to the Customer and the Customer shall be liable to pay on demand all reasonable costs, charges or losses sustained or incurred by the Supplier, subject to the Supplier confirming such costs, charges and losses to the Customer in writing. Such losses shall include any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.

## 6 COOLING OFF PERIOD

- 6.1 The Customer may cancel its subscription to any Support Plan at any time up to 14 days after the Contract Date. For the avoidance of doubt, the Customer shall have no right under this Agreement to cancel any purchase of Contract Hardware or Professional Services.

6.2 If the Customer wants to cancel its subscription pursuant to clause 6.1, it shall send a written cancellation request to helpdesk@wfhitsupport.co.uk. The Supplier shall confirm receipt of such cancellation request to the Customer in writing.

6.3 The Supplier shall refund to the Customer all Support Plan Services Fees paid by the Customer and any direct debit collection fees incurred by the Supplier no later than 7 Business Days after confirming receipt of the Customer's cancellation request under clause 6.2 at which point this Agreement shall automatically terminate.

## **7 INTELLECTUAL PROPERTY RIGHTS, LICENCES AND INDEMNITY**

7.1 The Customer and the Supplier acknowledge and agree that except as otherwise expressly provided for in this clause 7, neither party transfers or licences any Intellectual Property Rights to the other.

7.2 The Supplier grants the Customer non-exclusive, non-transferable, royalty-free licence in the UK to use for its own benefit and to use in its business to enable the Customer to service its customers, any supplier materials, including the Supplier Software for the duration of the Term, to the extent necessary to enable the Customer make use of the Services and otherwise perform its obligations under this Agreement.

7.3 The Customer grants the Supplier a non-exclusive, non-transferable, royalty-free licence in the UK to use any of its materials including the Customer Software and any Customer Data to permit any employee, officer, subcontractor or agent of the Supplier to use the same subject to the same restrictions as under this Agreement, for the duration of the Term, to the extent necessary to enable the Supplier to provide the Services, and otherwise perform its obligations under this Agreement.

7.4 The Customer shall, at its own cost, do all further acts and things as may be necessary, appropriate or desirable to give effect to this clause.

7.5 The Customer shall indemnify and keep indemnified the Supplier on demand 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 by the Supplier arising out of or in connection with:

7.5.1 any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Customer Software or any Customer materials, Customer Hardware, devices or equipment; or

7.5.2 any claim made against the Supplier in relation to the Customer's (including its officers, employees, agents, contractors and subcontractors) or the Customer's clients or customers (in each case including its officers, employees, agents, contractors and subcontractors) use of the Supplier Software, Contract Hardware, Contract Hardware or other Customer materials, devices or equipment; or

7.5.3 any unauthorised use by the Customer (including its officers, employees, agents, contractors and subcontractors) or the Customer's clients or customers (in each case including its officers, employees, agents, contractors and subcontractors) or any third party of any username and/or password issued to the Customer, except in circumstances where the Customer can demonstrate to the Supplier's satisfaction that the Customer or such Customer client or customer or such third party obtained the relevant details through no fault (including negligence) of the Customer.

7.6 The indemnity in clause 7.5 shall apply whether or not the Supplier has been negligent or at fault.

7.7 The Supplier shall be under no duty to mitigate the losses it claims under the indemnity in clause 7.5.

## **8 DATA PROTECTION**

8.1 Each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under Schedule 4.

## **9 CONFIDENTIALITY**

9.1 Each party shall keep in strict confidence:

9.1.1 all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by either party to the other party, its officers, employees, subcontractors or agents; and

9.1.2 any other confidential information concerning the other party's business or its products which the either party may obtain (**Confidential Information**).

9.2 The Customer shall restrict disclosure of Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging its obligations to the Supplier under this Agreement and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which the Customer under this Agreement.

9.3 Either party (a **receiving party**) may be given access to Confidential Information from the other party (a **disclosing party**) in order to perform its obligations under this Agreement. A disclosing party's Confidential Information shall not be deemed to include information that:

9.3.1 is or becomes publicly known other than through any act or omission of the receiving party;

9.3.2 was in the receiving party's lawful possession before the disclosure;

9.3.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

9.3.4 is independently developed by the receiving party, which independent development can be shown by written evidence to the disclosing party.

9.4 Subject to clause 9.6, a receiving party shall hold a disclosing party's Confidential Information in confidence and not make such disclosing party's Confidential Information available to any third party or use such disclosing party's Confidential Information for any purpose other than the implementation of this Agreement.

9.5 A receiving party shall use all reasonable endeavours to ensure that a disclosing party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in breach of this Agreement.

9.6 A receiving party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction. To the extent it is legally permitted to do so, a disclosing party shall give a receiving party as much notice of such disclosure as possible. Where notice of disclosure is not prohibited and is given in accordance with this clause 9.6, a receiving party shall take into account the reasonable requests of a disclosing in relation to the content of such disclosure.

9.7 This clause shall survive termination of this Agreement howsoever arising.

## **10 FEES AND PAYMENT**

10.1 The Customer shall pay the Fees and any Additional Fees to the Supplier in accordance with the provisions of this clause 10.

10.2 The Customer acknowledges and agrees that 5% of the Fees and any Additional Fees (as the case may be) paid by the Customer under this Agreement shall be donated by the Supplier to a charity of its choice.

10.3 The Customer acknowledges and agrees that the Hardware Fee is exclusive of delivery, packaging, packing, shipping, carriage, insurance and other charges and duties which may be added to and shall be payable with the Hardware Fee.

10.4 The Supplier may from time to time advertise discount codes on the Website, and third parties may advertise discount codes on their websites or elsewhere, which the Customer may be able to apply to its order to subscribe to a Support Plan (**Discount Code**).The Supplier may remove any Discount Code from

- its Website at any time and each and any Discount Code shall form part of an invitation to treat by the Supplier and not an offer by the Supplier to sell one or more Support Plans to the Customer at a discounted price.
- 10.5 The Supplier shall invoice the Customer for the Support Plan Services Fee less any amount to be discounted through application of a Discount Code monthly in advance of supply of the Support Plan Services on or around the first Business Day of each month beginning on the Contract Date. The Customer shall pay each and any such invoice in accordance with the Standard Payment Terms.
- 10.6 The Supplier shall invoice the Customer for the Hardware Fee in advance of delivery (or deemed delivery) in accordance with clause 4 on or around the first Business Day of the month succeeding the month in which the Hardware Fee is incurred. The Customer shall pay any such invoice in accordance with the Standard Payment Terms and before delivery (or deemed) delivery in accordance with clause 4.14.
- 10.7 The Supplier shall invoice the Customer for 50% of the Professional Services Fees on the Professional Services Commencement Date and the remaining 50% of the Professional Services Fee on completion of the Professional Services by the Supplier. The Customer shall pay each and any such invoice in accordance with the Standard Payment Terms.
- 10.8 The Supplier shall invoice the Customer for any Additional Fees in arrears on or around the first Business Day of the month succeeding the month in which such Additional Fees are incurred. The Customer shall pay each and any such invoice in accordance with the Standard Payment Terms.
- 10.9 The Fees and any Additional Fees contained or referred to in this Agreement:
- 10.9.1 shall be payable in pound sterling;
- 10.9.2 are, subject to clause 6 and 11, non-cancellable and non-refundable;
- 10.9.3 are exclusive of VAT, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 10.10 The Customer and the Supplier acknowledge and agree that the Support Plan Fee shall remain fixed for a period of 30 days from the Contract Date (in the case of a Standard Plan or a Professional Plan) and 12 months from the Contract Date (in the case of a Premium Plan).
- 10.11 Subject to clause 10.10, the Supplier may increase the Support Plan Fee and/or the Professional Services Fee during each (Renewal Period) by providing not less than 20 days' notice to the Customer, provided that the Supplier shall not be entitled to increase the Support Plan Fee and/or the Professional Services Fee under this clause more than once in respect of each Renewal Period. Any increase in the Support Plan Fee and/or the Professional Services Fee under this clause 10.11 shall not exceed 5% of the Support Plan Fee and/or the Professional Services Fee payable by the Customer in the immediately preceding Standard/Professional Initial Term, Premium Initial Term or Renewal Period (as the case may be).
- 10.12 If the Supplier has not received payment of the Fees and any Additional Fees (as the case may be) by the due date in accordance with the Standard Payment Terms then without prejudice to any other rights or remedies the Supplier may have under this Agreement or at law:
- 10.12.1 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the base rate of Barclays Bank from time to time, commencing on such due date and continuing until fully paid, whether before or after judgment; and
- 10.12.2 the Supplier may suspend supply of the Support Plan Services, supply of the Professional Services and/or delivery of the Contract Hardware (as the case may be) without notice to the Customer and at without liability to it.

## **11 LIMITATION OF LIABILITY**

- 11.1 The extent of each parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clauses 11.5 and 11.7, each party's total liability (save for the Customer's liability in respect of the Fees and any Additional Fees) shall not exceed the total Fees and any Additional Fees paid or payable (whichever is higher) under this Agreement in the previous 12 months.
- 11.3 Subject to clauses 11.5 and 11.7, neither party shall be liable for any consequential, indirect or special losses.
- 11.4 Subject to clauses 11.5 and 11.7, the Supplier shall not be liable for any losses (whether direct, consequential, indirect or special) arising from or in connection with:
- 11.4.1 the Contract Hardware;
- 11.4.2 the Customer Hardware;
- 11.4.3 the Customer Software;
- 11.4.4 the Supported Systems; or
- 11.4.5 any defect in the Supplier Software attributable to the acts or omissions of a third party.
- 11.5 Subject to clauses 11.5 and 11.7, neither party shall be liable for any of the following categories of loss (whether direct or indirect):
- 11.5.1 loss of profit;
- 11.5.2 loss of or corruption of data;
- 11.5.3 loss of use;
- 11.5.4 loss of production;
- 11.5.5 loss of contract;
- 11.5.6 loss of opportunity;
- 11.5.7 loss of savings, discount or rebate (whether actual or anticipated);
- 11.5.8 harm to reputation; or
- 11.5.9 loss of goodwill.
- 11.6 The limitations of liability set out in clauses 11.2 to and including 11.5 shall not apply in respect of any indemnities given by the Customer or the Supplier under this Agreement.
- 11.7 Except as expressly stated in this Agreement, and subject to clause 11.8, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 11.8 Notwithstanding any other provision of this Agreement, neither party's liability shall be limited or excluded in any way in respect of the following:
- 11.8.1 death or personal injury caused by negligence;
- 11.8.2 fraud or fraudulent misrepresentation; or
- 11.8.3 any other losses which cannot be excluded or limited by law.

## 12 TERMINATION

- 12.1 Either party may terminate this Agreement at any time by giving notice to the other if:
- 12.1.1 the other party commits a material breach of any term of this Agreement which breach is irremediable or (or if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 12.1.2 the other party has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 10 Business Days after the other party has received notification that the payment is overdue;
  - 12.1.3 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;
  - 12.1.4 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;
  - 12.1.5 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;
  - 12.1.6 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
  - 12.1.7 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];
  - 12.1.8 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);
  - 12.1.9 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;
  - 12.1.10 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;
  - 12.1.11 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;
  - 12.1.12 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 12.1.1 to Clause **Error! Reference source not found.** (inclusive);
  - 12.1.13 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - 12.1.14 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.
- 12.2 The Supplier may terminate this Agreement at any time by giving notice to the Customer if the Customer breaches any warranty given by it under this Agreement.
- 12.3 If the Customer is subscribing to a Standard Plan or a Professional Plan, the Customer may terminate this Agreement by giving not less than 14 days' notice to the Supplier prior to the end of the Standard/Professional Initial Term or the applicable Renewal Period to expire at the end of the Standard/Professional Initial Term or the applicable Renewal Period (as the case may be).
- 12.4 If the Customer is subscribing to a Premium Plan, the Customer may terminate this Agreement by giving not less than 14 days' notice to the Supplier prior to the end of the Premium Initial Term or the applicable Renewal Period (as the case may be) to expire at the end of the Premium Initial Term or the applicable Renewal Period (as the case may be).
- 12.5 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.
- 12.6 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, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 12.7 On termination of this Agreement for any reason:
- 12.7.1 the Supplier shall immediately suspend supply of the Support Plan Services, delivery of the Contract Hardware and/or supply the Professional Services (as the case may be) at no liability to the Customer.
  - 12.7.2 any and all outstanding Fees and Additional Fees shall become immediately due and payable by the Customer;
  - 12.7.3 a receiving party shall, at its sole cost and as requested by a disclosing party in writing, destroy or return a disclosing party's Confidential Information, all documents and materials incorporating, containing, based on or reflecting on a disclosing party's Confidential Information and any copies, records or reductions to writing thereof in a disclosing party's possession;
  - 12.7.4 the Supplier shall comply with its obligations contained in paragraph 13 of Part A of Schedule 4; and
  - 12.7.5 if the Customer appoints a supplier to provide similar services to the Services provided by the Supplier, the Supplier shall upon written request from the Customer, and at no cost to the Customer, provide:
    - 12.7.5.1 all administrative login details held by the Supplier in respect of the Services to the new supplier;
    - 12.7.5.2 all Customer Data and Protected Data to the new supplier, or shall procure that data held by Sub-Processors is provided to the new supplier; and
    - 12.7.5.3 all reasonable assistance to the new supplier as is necessary in respect of any data to be provided under this clause 12.7.5.
- 12.8 Any notice to terminate given by the Customer under this clause shall be in writing, sent by e-mail to info@wfhitsupport.co.uk, shall take effect and shall be deemed received in accordance with clause 13.

## 13 FORCE MAJEURE

- 13.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control (**Force Majeure Event**).

## 14 NOTICES



- 14.1 Any notice required to be given under or in connection this Agreement shall be in writing and shall be:
- 14.1.1 sent by e-mail to the following addresses:
- 14.1.1.1 Supplier: info@wfhitsupport.co.uk
- 14.1.1.2 Customer: the e-mail address the Customer provides to the Supplier when signing up to subscribe to a Support Plan through the Website or such other e-mail address the Customer notifies to the Supplier; or
- 14.1.1.3 delivered by hand or sent by pre-paid first-class post or recorded delivery post to the Supplier's registered office address set out in this Agreement (in the case of such notice given by the Customer) or the address the Customer provides to the Supplier when signing up to subscribe to a Support Plan through the Website or such other address the Customer notifies to the Supplier (in the case of such notice given by the Supplier).
- 14.2 Any notice shall take effect and shall be deemed to have been received:
- 14.2.1 if delivered by hand, on signature of a delivery receipt;
- 14.2.2 if sent by pre-paid first-class post at 9.00 am on the second Business Day after posting; or
- 14.2.3 if sent by e-mail, at the time of transmission (as shown on a printout obtained by the sender), or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 14.2.3, **business hours** means 09:00 to 17:00 UK local time Monday to Friday on a day that is not a public holiday in the place of receipt.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 15 ENTIRE AGREEMENT**
- 15.1 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.
- 15.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 16 NO PARTNERSHIP OR AGENCY**
- 16.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 17 RIGHTS AND REMEDIES**
- 17.1 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 18 SEVERABILITY**
- 18.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 19 WAIVER**
- 19.1 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 20 SET OFF**
- 20.1 Each party must pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 21 ASSIGNMENT**
- 21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 22 THIRD PARTY RIGHTS**
- 22.1 Except as expressly provided for in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.
- 23 VARIATION**
- 23.1 The Supplier may vary this Agreement at any time after the Contract Date before termination howsoever arising by sending a copy of the proposed variation to the Customer provided that any such variation shall only be effective if the Customer signifies its intention to be bound by it.
- 23.2 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 24 GOVERNING LAW**
- 24.1 This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 25 JURISDICTION**
- 25.1 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

**SCHEDULE 1 – SUPPORT PLAN SERVICES**

1.1 The features of the Support Plan Services are set out in the below table (**Support Plan Services Table**):

<p>Unlimited Remote Computer-based Support and Microsoft 365/G Suite Support</p>	<p>Unlimited remote computer-based support during Service Hours (Standard Plan or Professional Plan) or 24/7 (Premium Plan) in relation to the Supported Systems and:</p> <p>Microsoft 365: Exchange Online, SharePoint, OneDrive, Teams, Planner, To Do, Azure Active Directory, InTune, Word, Excel, PowerPoint, Outlook and security alerts management;</p> <p>G Suite: Gmail, Drive, Meet, Calendar, Docs, Sheets, Slides, Endpoint management and security alerts management</p> <p>and any other computer programs and/or applications as agreed in writing between the Customer and the Supplier during the Term.</p>
<p>Unlimited Telephone Support</p>	<p>Unlimited telephone support during Service Hours in relation to the Supported Systems and:</p> <p>Microsoft 365: Exchange Online, SharePoint, OneDrive, Teams, Planner, To Do, Azure Active Directory, InTune, Word, Excel, PowerPoint, Outlook and security alerts management;</p> <p>G Suite: Gmail, Drive, Meet, Calendar, Docs, Sheets, Slides, Endpoint management and security alerts management</p> <p>and any other computer programs and/or applications as agreed in writing between the Customer and the Supplier during the Term.</p>

New staff On-boarding	<p>Set up of accounts for the Customer's new employees or officers in relation to the Supported Systems and the Supplier Software including data access and e-mail inboxes.</p> <p>Set up of workstations for the Customer's new employees or officers before his or her commencement date of employment with the Customer.</p>
Leavers Off-boarding	Removal of access by the Customer's former employees or officers to the Supported Systems and the Supplier Software (as the case may be) including e-mail inboxes and data.
Contract Hardware Purchase Service	The ability to purchase Contract Hardware from the Supplier in accordance with clause 4 of this Agreement.
Hardware Asset Management	<p>Access to and use of Supplier Software for hardware asset management</p> <p>The ability to request a written report from the Supplier showing all Supported Devices including device age and technical specification (<b>Hardware Asset Report</b>).</p> <p>Production by the Supplier of a Hardware Asset Report as requested by the Customer.</p>
Antivirus	Access to and use of Supplier Software which is business-grade antivirus software on all Supported Devices.
Email Filtering	Access to and use of Supplier Software which is business-grade e-mail filtration software on all Supported Devices which assesses all e-mails sent or received by all Supported Devices for spam, spearfishing attacks, malware, e-mail sender or recipient impersonation or attempted fraud.
Hard Disk Encryption Management	Access to and use of Supplier Software for hard disk encryption management on all Supported Devices which enables the Supplier to manage all aspects of hard disk encryption, including deployment, key recovery and compliance. It is recommended that only Solid State Disks (SSDs) are encrypted.
DNS Protection	Access to and use of Supplier Software for domain name system protection on all Supported Devices which blacklists dangerous sites and filters out unwanted content meaning only legitimate websites (including online banking) are accessed, and avoids the Customer's employees or officers accidentally entering details into fraudulent or potentially fraudulent websites.
Microsoft 365/G Suite Data Backup	<p>Remote backup of all data from and in relation to the following accessed and used on Supported Devices:</p> <p>Microsoft 365: Exchange Online, SharePoint, OneDrive and Teams;</p> <p>G Suite: Gmail, Calendars, Contacts, Drive and Shared Drive and any other computer programs and/or applications as agreed in writing between the Customer and the Supplier during the Term.</p>

- 1.2 If the Customer is subscribing to a Standard Plan, the following features of the Support Plan Services are included: Unlimited Remote Computer-based Support and Microsoft 365/G Suite Support (during the Service Hours); New staff On-boarding; Leavers Off-boarding; Contract Hardware Purchase Service; Hardware Asset Management; Antivirus as varied as varied and together with such additional services as the Supplier and the Customer shall agree from time to time in writing in accordance with clause 23.
- 1.3 If the Customer is subscribing to a Professional Plan, the following features of the Support Plan Services are included: Unlimited Remote Computer-based Support and Microsoft 365/G Suite Support (during the Service Hours); Unlimited Telephone Support; New staff On-boarding; Leavers Off-boarding; Contract Hardware Purchase Service; Hardware Asset Management; Antivirus; Hard Disk Encryption Management; DNS Protection as varied and together with such additional services as the Supplier and the Customer shall agree from time to time in writing in accordance with clause 23.
- 1.4 If the Customer is subscribing to a Premium Plan, the following features of the Support Plan Services are included: Unlimited Remote Computer-based Support and Microsoft 365/G Suite Support (during the Service Hours); Unlimited Telephone Support; New staff On-boarding; Leavers Off-boarding; Contract Hardware Purchase Service; Hardware Asset Management; Antivirus; Hard Disk Encryption Management; DNS Protection; DNS Protection; Microsoft 365/G Suite Data Backup as varied and together with such additional services as the Supplier and the Customer shall agree from time to time in writing in accordance with clause 23.

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**SCHEDULE 2 – PROFESSIONAL SERVICES**

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1.1 The Professional Services available for supply by the Supplier pursuant to clause 5 are set out in the following table (**Professional Services Table**):

<b>Professional Service</b>	<b>Description of Professional Service</b>
Data and Mailbox migrations to Microsoft 365 and G Suite	Migration of data from Microsoft 365 and G Suite as agreed between the Supplier and the Customer
IT Consultancy (strategy & security)	Consultancy services in relation to information technology strategy and security as agreed between the Supplier and the Customer.
IT Director as a Service	Provision of a remote information technology director for the Customer's business as agreed between the Supplier and the Customer
IT Training (Microsoft 365 & G Suite)	Training services on and in relation to use of Microsoft 365 and G Suite as agreed between the Supplier and the Customer
Microsoft 365 & G Suite Enhancements or Modifications	Enhancement and/or modification of any aspect(s) of Microsoft 365 and/or G Suite as agreed between the Supplier and the Customer

**SCHEDULE 3 - SERVICE LEVELS**

**1 SERVICE LEVELS AND SERVICE CREDITS**

1.1 The Supplier shall perform the Services to meet or exceed the Service Levels applicable to such Support Plan as set out in the applicable table below. If the Supplier fail to meet such Service Levels (**Service Level Default**) the Supplier shall pay the applicable service credits (**Service Credits**) as set out in the table below (**Service Level Table**)

<b>Service Levels</b>				
<b>Service type</b>	<b>Service Level Description</b>	<b>Metrics</b>	<b>Measurement period</b>	<b>Service Credits</b>
Email assistance (Standard Plan), Email and telephone assistance (Professional Plan or Premium Plan)	Priority 1 support calls logged and email confirmation sent within 1 hour during Service Hours	85%	Quarterly	10% of the Support Plan Fee
Email assistance (Standard Plan), Email and telephone assistance (Professional Plan or Premium Plan)	Priority 2 support calls logged and email confirmation sent within 120 minutes during Service Hours	85%	Quarterly	10% of the Support Plan Fee
Email assistance (Standard Plan), Email and telephone assistance (Professional Plan or Premium Plan)	Priority 3 support calls logged and email confirmation sent within 180 minutes during Service Hours	85%	Quarterly	10% of the Support Plan Fee

1.2 The Customer acknowledges and agrees that Service Credits shall be its exclusive remedy in relation to the Supplier's failure to meet a specified Service Level.

**2 APPLICATION OF SERVICE CREDITS**

2.1 Any and all Service Credits shall be set against the Fees and detailed in the Customer's invoice for the Support Plan Fee issued in the month succeeding the month in with the Service Credits are incurred by the Supplier.

**3 PRIORITY LEVELS**

3.1 The priority levels referred to in the Service Level shall be classified by the Supplier according to following table:

<b>Priority level</b>	<b>Description</b>
1	This is the highest priority level and it is for very serious incidents that:  prevent the effective use of any business-critical service including Supported Devices;  seriously affect a substantial number of users;  imply a serious breach of security;  have serious implications for the Customer's reputation;  in the Supplier's opinion, are serious and require immediate attention; or  occur during a busy and/or critical period.
2	This is for serious incidents that:  prevent the effective use of any Supported Devices and affect a substantial number of users;  have possible implications for an individual user; or  in the Supplier's opinion, warrant this priority level.

3	<p>This is for routine issues that:</p> <ul style="list-style-type: none"><li>prevent the use of any Supported Device by a user;</li><li>cause inconvenience to a small number of users; or</li><li>have possible implications for the Customer's reputation.</li></ul>
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## SCHEDULE 4 - DATA PROTECTION

### Part A: Operative Provisions

#### 1 DEFINITIONS

1.1 In this Schedule the following words have the following meanings:

<b>Controller</b>	has the meaning given in applicable Data Protection Laws from time to time.
<b>Data Protection Laws</b>	means, as binding on either party or the Services:  (a) the GDPR;  (b) the Data Protection Act 2018;  (c) any laws which implement any such laws; and  (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.
<b>Data Subject</b>	has the meaning given in applicable Data Protection Laws from time to time.
<b>GDPR</b>	means the General Data Protection Regulation, Regulation (EU) 2016/679.
<b>International Organisation</b>	has the meaning in applicable Data Protection Laws from time to time.
<b>Personal Data</b>	has the meaning given in applicable Data Protection Laws from time to time.
<b>Personal Data Breach</b>	has the meaning given in applicable Data Protection Laws from time to time.
<b>Processing</b>	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including <b>process</b> , <b>processed</b> and <b>processes</b> shall be construed accordingly).
<b>Processor</b>	has the meaning given in applicable Data Protection Laws from time to time.
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under this Agreement.
<b>Sub-Processor</b>	means any agent, subcontractor or other third party engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data.

#### 2 CUSTOMER'S COMPLIANCE WITH DATA PROTECTION LAWS

- 2.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to this Agreement.
- 2.2 The Customer shall, at all times, comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws. Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.

#### 3 SUPPLIER'S COMPLIANCE WITH DATA PROTECTION LAWS

- 3.1 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement.

#### 4 INDEMNITY

- 4.1 The Customer shall indemnify and keep indemnified the Supplier on demand against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) (**Losses**) arising out of or in connection with any breach by the Customer of its obligations under this Schedule.
- 4.2 The indemnity in clause 4.1 shall apply whether or not the Supplier has been negligent or at fault.

4.3 The Supplier shall be under no duty to mitigate the Losses it claims under this indemnity.

## 5 INSTRUCTIONS

5.1 The Supplier shall only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with Section 1 of Part B of this Schedule and this Agreement (including when making any transfer to which paragraph 1 relates), except to the extent:

- 5.1.1 that alternative processing instructions are agreed between the parties in writing; or
- 5.1.2 otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest).

5.2 Without prejudice to paragraph 2 of this Part A, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which do not infringe the Data Protection Laws.

## 6 SECURITY

6.1 Taking into account the state of technical development and the nature of processing, the Supplier shall implement and maintain the technical and organisational measures set out in Section 2 of Part B of this Schedule to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

## 7 AUTHORISED SUB-PROCESSORS

7.1 The Customer consents to the Supplier appointing each of the following entities (including their employees, directors and officers) as an **Authorised Sub-Processor**: Microsoft, iland, Mimecast, Google, Datto, ConnectWise, ITG Software, TechData, Ingram Micro, Westcoast, Jamf, Sophos, JumpCloud and Redstor.

## 8 SUB-PROCESSING AND PERSONNEL

8.1 The Supplier shall:

8.1.1 not permit any processing of Protected Data by any third party which is not an Authorised Sub-Processor (as defined in paragraph 7) or any Authorised Sub-Processor that is not subject to an enforceable obligation of confidence with regards to the Protected Data without the written prior authorisation of the Customer;

8.1.2 prior to the relevant Authorised Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Authorised Sub-Processor under a written contract containing materially the same obligations as under this Schedule (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by the Supplier and ensure each such Authorised Sub-Processor complies with all such obligations;



- 8.1.3 remain fully liable to the Customer under this Agreement for all the acts and omissions of each Authorised Sub-Processor as if they were its own;  
and
- 8.1.4 ensure that each Authorised Sub-Processor is subject to a binding written contractual obligation to keep the Protected Data confidential.

## **9 ASSISTANCE**

- 9.1 The Supplier shall (at the Customer's cost) assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Supplier.
- 9.2 The Supplier shall (at the Customer's cost) and taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

## **10 INTERNATIONAL TRANSFERS**

- 10.1 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the UK or to any International Organisation without the prior written authorisation of the Customer.

## **11 AUDITS AND PROCESSING**

- 11.1 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this Schedule and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28 of the GDPR), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this paragraph 11).

## **12 BREACH**

- 12.1 The Supplier shall notify the Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

## **13 DELETION OR RETURN OF PROTECTED DATA AND SURVIVAL**

- 13.1 On termination of this Agreement howsoever arising, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This Schedule shall survive termination of this Agreement indefinitely in the case of paragraphs 4 and 13 of this Part A and for a period of 12 months following such termination of this Agreement in the case of all other paragraphs and provisions of this Schedule.

## **Part B: Data Processing and Security Details**

### **Section 1 – DATA PROCESSING DETAILS**

- 1.1 Processing of the Protected Data by the Supplier under this Agreement shall be for the subject-matter, duration, nature, purpose and shall involve the types of Personal Data and categories of Data Subjects set out in this Section 1 of this Part B.

#### **Subject-matter of processing:**

The personal data of employees and officers of the Customer and employees and officers of the Customer's clients or customers as required for supply of the Services.

#### **Duration of the processing:**

The Standard/Professional Initial Term or the Premium Initial Term (as the case may be) plus each and any Standard/Professional Renewal Period or Premium Renewal Period (as the case may be).

#### **Nature of the processing:**

Use, storage, access, collection and consultation.

#### **Purpose of the processing:**

The supply of the Services

#### **Type of Personal Data:**

Forenames, middle names, surnames, e-mail addresses, telephone numbers, residential/business addresses and job titles.

#### **Categories of Data Subjects:**

Employees and officers of the Customer and employees and officers of the Customer's customers or clients.

## **Section 2 – MINIMUM TECHNICAL AND ORGANISATIONAL SECURITY MEASURES**

1.1 The Supplier shall implement and maintain the following technical and organisational security measures to protect the Protected Data:

1.1.1 in accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, the Supplier shall implement appropriate technical and organisational security measures appropriate to the risk, including, as appropriate, those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.