Date: **27.03.2026**

Issue No: **1.2**

# TSG Master Services Agreement

**AGREEMENT OVERVIEW**

This one document governs our commercial arrangement. We break it down into sections:

- **Section A**: General Terms and Conditions;
- **Section B**: Managed Services (including System Care, People Care and Cyber Care) Terms
- **Section C**: Professional Service Terms;
- **Section D**: Software Licensing, Maintenance and Upgrade Services; and
- **Section E**: Supply of Goods Terms.

Section A (General Terms and Conditions) applies to ALL of the work we carry out for you. Sections **B** to **E** only apply according to the services you have chosen to buy from us.

If you have any questions when reviewing our statement of work, or along the way, please feel free to contact us at: Technology Services Group Ltd, Kingsway North, Gateshead, Tyne and Wear, NE11 0JZ. You are entitled at any time to request in writing the provision of any or all the services we provide and we would be delighted to discuss these with you any time.

**THIS SALES CONTRACT (THE "AGREEMENT") CONSISTS INCLUSIVELY OF SECTIONS A TO E BELOW.**

**Section A – Terms and Conditions**
It is agreed

## 1. INTERPRETATION

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

**Applicable Data Protection Laws:** means:

i) the Data Protection Act 2018, the Data (Use and Access) Act 2025 and any other applicable 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).

ii) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which TSG is subject, which relates to the protection of personal data.

**Background Materials**: means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by TSG which may have been created outside the scope, or independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

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

**Business Systems:** the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Customer or any of its agents or contractors.

**Change**: mean any change to the Services.

**Change Control Note**: means the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

**Change Control Procedure**: means the procedure for changing the Services, set out in clause 11.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its "**Representatives**") to the other Party and that Party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Commencement Date**: means the date as specified in the relevant Statement of Work.

**Commissioner:** the Information Commissioner (see section 114, DPA 2018).

**Customer:** the customer as identified in the relevant Statement of Work.

**Customer Data:** any information that is provided by the Customer to TSG as part of the Customer's use of the Services, including any information derived from such information.

**Customer Personal Data:** any personal data which TSG processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

**Customer Site:** means the locations where the Services are provided as identified in the Statement of Work.

**Customer's Operating Environment:** the Customer's computing environment (consisting of hardware and software) that is to be used by the Customer in connection with its use of the Managed Services and which interfaces with TSG's System in order for the Customer to receive the Managed Services, but excluding the Customer-side Equipment.

**Customer-side Equipment:** any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by TSG as part of the Services.

**Definition of Service:** a document either included or enclosed in the relevant Statement of Work which defines the Service Level Arrangements.

**Deliverables:** means all Documents, products and materials developed by TSG or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**Document:** means, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Dispute Resolution Procedure:** the procedure described in Clause 25.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/679) as it has effect in EU law.

**Fees:** means the relevant fees for the Services and the Software Licence(s) (as applicable) set out in the Statement of Work or as otherwise agreed in writing as may be varied from time to time pursuant to the terms of this Agreement.

**Force Majeure:** any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, riot, computer viruses and malware, epidemics, pandemics, civil commotion, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lock out of the party's own staff shall not entitle them to claim that to be a force majeure event.

**Goods:** the hardware provided as part of the Services (or any part of them) as set out within the relevant Statement of Work.

**Good Industry Practice:** the standards that fall within the upper quartile of a skilled and experienced provider of business-critical managed services similar or identical to the Services,

having regard to factors such as the nature and size of the Parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

**Hardware:** all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by TSG to deliver the Managed Services to the Customer.

**Initial Term**: means the initial term as specified in the Statement of Work.

**Intellectual Property Rights or IPR:** any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world now or in the future, in each case for their full term, together with any future rights and renewals or extensions.

**IPR Claim:** means a claim arising from the infringement of IPR belonging to third parties.

**Licence Agreement**: the end user licence agreement between the Third Party Software Supplier and the Customer in the form which is notified by the Third Party Software Supplier from time to time, including the terms of the Microsoft customer agreement which are found at https://www.microsoft.com/licensing/docs/customeragreement as updated from time to time**.** Such Licence Agreement terms shall be provided directly to the Customer by the Third Party Software Supplier.

**Local System Components**: means equipment supplied by the Customer such as routers, switches, PCs, thin client devices, smart phones, wireless controllers and access points.

**Losses:** means costs, fines, damages, losses and liabilities suffered by a Party.

**Microsoft Online Services:** means any of the Microsoft-hosted online services subscribed to the Customer under this Agreement, and as set out in the Statement of Work and which terms are governed by the Licence Agreement.

**Microsoft Product(s):** means the Microsoft Online Services, tools, software, hardware, or professional support or consulting services provided under the terms of the Licence Agreement.

**Minimum Cyber Security Protection:** means the minimum cyber security protection required to be purchased by the Customer and provided by TSG under this Agreement, in order for the Customer to use the Services.

**Managed Services:** means the managed services described in Section B (if applicable);

**Managed Services Terms:** means the terms and conditions relating to the provision of the Managed Services in Section **B** of this Agreement.

**Normal Business Hours:** 9.00 am to 5.30 pm local UK time on Business Days.

**Out of Scope Services:** means those out of scope services specified as such in the Statement of Work together with any other services which are not detailed in the Statement of Work.

**Professional Services:** means the professional services described in the Statement of Work to be performed by TSG in accordance with this Agreement.

**Proposify:** means TSG's order system which contains all communications, commercials and agreements between TSG and its customers.

**Professional Services Terms:** the terms and conditions relating to the provision of the Professional Services in Section **C**.

**Purpose**: the purposes for which the Customer Personal Data is processed, as set out in the applicable Statement of Work.

**Rates:** TSG's standard hourly or daily fee rates as provided by TSG to the Customer from time to time.

**Relief Events:** the following events:

(a) any failure by the Customer to comply with its obligations under this Agreement;

(b) any error or malfunction in the Business Systems or any other software, hardware or systems for which TSG is not responsible or any failure by the Customer, its agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which TSG is not responsible;

(c) any failure by the Customer or its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to TSG which is reasonably required by TSG for the proper performance of its obligations under this Agreement;

(d) incompetence, misuse or other error of a user of the Services or erroneous or incorrectly prepared Customer materials;

(e) failure to access or use the Services in accordance with the terms of this Agreement or TSG's instructions;

(f) any change, addition or variation to the Services or the operating environment (including the Customer's Operating Environment) outside TSG's normal procedures made by or at the request of the Customer;

(g) any change, addition, variation or repair other than those carried out by TSG;

(h) use of the Services in combination with other systems, software or equipment of the Customer (or any third party) not approved by TSG;

(i) any telecommunications network defect, delay or failure or failure of the Customer's hardware or other systems unless forming part of the Services;

(j) any failure in performance of the Services caused by matters other than the hardware, software, networks, databases and other information technology equipment owned or provided by TSG; or

(k) any of the causes or events set out in Clause 1.7.

**Representative:** means the person(s) nominated by each Party in accordance with this Agreement.

**Retail Prices Index:** means the Retail Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree (such agreement not to be unreasonably withheld or delayed), acting reasonably, most closely resembles such index.

**Scheduled Downtime**: means the total amount of time during which the Customer is not able to access the Services due to planned maintenance.

**Service Level Arrangements:** the service level arrangements set out in the Definition of Service.

**Services:** means the Managed Services, the Professional Services, Maintenance and Upgrade Services and the Subscription Services (as applicable) which may be provided or procured by TSG under a Statement of Work.

**Software Licence(s)**: means any software licences procured by TSG as part of the Services on behalf of Customer.

**Statement of Work:** means the statement of work, which sets out the Services and the Service Level Arrangements (contained within the Definition of Service) being carried out by TSG for the Customer.

**Subscription Services:** means a right to use the Microsoft Product(s) and any other cloud based subscription service procured by TSG for the Customer for a defined term.

**Subsequent Term**: a period the same as the initial term agreed immediately following the Initial Term, or if this Agreement has already automatically renewed, immediately following any such subsequent period, unless otherwise agreed in writing.

**TSG's System:** the system to be used by TSG in performing the Managed Services, including the Hardware, any Third-Party Services, the Customer-side Equipment and communications links between the Hardware and the Customer-side Equipment and the Customer's Operating Environment.

**Supply of Goods Terms:** the terms and conditions relating to the supply of Goods set out in Section **E**.

**Third Party Supplier:** any third party that supplies Third-Party Services or Goods to TSG and/or the Customer (as the case may be) during the provision of the Services.

**Third-Party Services:** any services, goods, code or software programs written or provided by other third parties which are used by the Customer during the provision of the Services.

**Third Party Software**: any software that is used by the Customer but that is not owned by or licensed to the Customer by TSG which includes the Subscription Services.

**Ticket:** means an issue logged through a communication received by TSG from the Customer reporting a defect or malfunction in the business systems covered by the Managed Services or Subscription Services.

**TSG**: Technology Services Group Limited (T/A TSG), registered in England & Wales with company number 04816673, whose registered office is at Kingsway North, Team Valley Trading Estate, Gateshead, Tyne & Wear, England, NE11 0JZ.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Unscheduled Downtime:** means any time when any or all of the applications and Services provided by TSG to the Customer shall be unavailable to the Customer due to unexpected system failures other than Scheduled Downtime or the downtime is attributable to events not under the control of TSG.

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

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

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

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

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7 A reference to **writing** or **written** includes e-mail.

1.8 Any phrase introduced by the words **including**, **includes**, **in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

1.9 References to Clauses are to the Clauses of this Agreement.

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

## 2. Application of these terms and conditions and Statements of Work

1.1 The Customer shall be bound by the terms and conditions in this Section **A**, and any additional terms and conditions in Sections **B to E** inclusive, as and when those services become applicable to the Customer.

1.2 This Agreement shall (i) be in substitution for any prior oral or other prior arrangements between TSG and the Customer in connection with the purchase of the relevant Services; and (ii) prevail over any of the Customer's inconsistent terms or conditions contained in, or referenced in, any order confirmation or other acknowledgement, quotation, purchase order(s), delivery note, invoice or similar document or implied by law, trade custom or practice.

1.3 No addition to, variation of or other amendment or purported amendment to any Statement of Work or this Agreement shall be binding on the Parties unless expressly stated as such, made in writing and signed by or acknowledged by a Representative of both Parties.

1.4 Any quotation given to the Customer by TSG is for budgetary purposes only and shall not constitute an offer. For:

Managed Services, Subscription Services or Professional Services, a quotation is only valid for a period of thirty (30) days; and/or

the supply of Goods, a quotation is only valid for a period of fourteen (14) days,

from its date of issue unless otherwise agreed by TSG in writing and shall only become binding upon the signing of a Statement of Work.

1.5 Where a Customer makes a request for Services (verbally, or in writing), TSG shall:

either notify the Customer that it is not able to provide the requested Services; or

prepare a Statement of Work for the Customer for its approval. In preparing the Statement of Work, TSG shall calculate the Fees.

1.6 A Statement of Work shall not enter into force, be legally binding or have any other effect unless the Statement of Work has been agreed by the Representatives of the Customer and electronically signed by the Customer within Proposify.

1.7 Any Statement of Work is valid for the period as set out on the Statement of Work and TSG may withdraw the Statement of Work at any time by notice to the Customer.

1.8 Each Statement of Work:

shall be entered into by the Customer and TSG; and

forms a separate contract between the parties, which is subject to the terms of this Agreement.

1.9 Any amendments to this Agreement agreed by the Customer and TSG shall be deemed to apply to all future Statements of Work entered into after the date of such amendment.

1.10 Any typographical, clerical or other error or omission in the Statement of Work, within Proposify or any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by TSG shall be subject to correction without any liability on the part of TSG.

1.11 Any costs quoted for Third Party Software or Goods may be subject to Fees changes between the date of the Statement of Work to the date the Customer confirms acceptance of the Statement of Work within Proposify, of which TSG is not in control.

1.12 Time for delivery of any aspect of the Services shall not be of the essence.

1.13 The Customer shall not share the Statement of Work with any third party without the prior written consent of TSG.

1.14 In the event of any conflict or inconsistency between the Clauses of this Agreement, a Statement of Work and the Licence Agreement, the following order of precedence shall apply (in decreasing [) to the extent of such conflict or inconsistency:

the relevant Statement of Work;

the Licence Agreements, to the extent applicable to the Services;

the Section applicable to the Services in question; and

Section A.

**3. RESPONSIBILITIES OF TSG**

1.1 TSG shall:

provide the Services in accordance with the terms of this Agreement;

use its commercially reasonable endeavours to provide any Deliverables set out under this Agreement;

use its reasonable endeavours to meet any performance dates set out in any Statement of Work but unless otherwise expressly agreed in writing in such Statement of Work. TSG does not warrant that the Customer's use of the Services will be uninterrupted or error-free or that the Services, and/or the information obtained by the Customer through the Services will meet the Customer's requirements; or the Services will be free from Vulnerabilities;

commit sufficient resources to the provision of the Services to enable their delivery in accordance with the Agreement;

provide the Services with due care, skill and ability in accordance with Good Industry Practice;

take such steps as may be required to fulfil its obligations under this Agreement;

utilising suitably skilled, qualified, experienced, supervised and vetted employees, agents, representatives and authorised sub-contractors who will exercise all reasonable skill and care;

notify the Customer promptly if TSG is unable to comply with any of the terms of this Agreement, any of the Licence Agreements or any Statement of Work; and

observe and ensure that its personnel observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer Sites and which have been communicated to it a week prior to the Services commencing, where TSG is required to be on such Customer Sites for the provision of the Services.

1.2 TSG shall co-operate with the Customer in all matters relating to the Services and shall appoint a Representative ("**TSG Representative**"), as the contact throughout the Services.

1.3 TSG may at its discretion appoint a project manager to liaise with the Customer on all matters relating to the Services. TSG shall use reasonable endeavours to ensure that the same person

acts as project manager throughout the provision of the Services, but may replace them from time to time where reasonably necessary in the interests of TSG's business.

1.4 The Customer confirms that TSG may employ sub-contractors without seeking the prior consent of the Customer. Notwithstanding the foregoing, TSG shall at all times be responsible for and liable in respect of the performance of all obligations under this Agreement, whether such obligations are performed by TSG itself, or any sub-contractor engaged by TSG and under the supervision of TSG. For the avoidance of doubt, TSG shall not be held liable for the actions and or omissions of third parties who are not its subcontractors.

1.5 TSG shall provide reasonable notice to the Customer of any change in its senior personnel engaged as part of the Services. Where relevant, TSG shall replace any senior personnel who are removed with another appropriately skilled person.

## 4. RESPONSIBILITIES OF CUSTOMER

1.1 To the extent that TSG requires access to the Customer Site to perform the Services, the Customer shall provide such access during Normal Business Hours and to provide a suitable work environment to enable TSG to perform such Services subject to TSG complying with such internal policies and procedures of the Customer (including those relating to security and health and safety) as may be notified to TSG in writing from time to time.

1.2 The Customer shall co-operate with TSG in all matters relating to the Services and shall appoint a minimum of two Representatives ("**Customer Representatives**"), who shall have authority to commit the Customer on all matters relating to the relevant Service.

1.3 The Customer agrees and acknowledges the terms of the applicable Licence Agreements and the terms of the Licence Agreement shall form part of this Agreement. For the avoidance of doubt, in the event the applicable Licence Agreements, and/or the Licence Agreement is not applicable to the Services being received or delivered by TSG to the Customer under this Agreement, such agreements shall not apply.

1.4 The Customer shall:

make the Customer's Operating Environment and Customer-side Equipment, required to provide the Services, accessible to TSG's support staff, enable logons or passwords required for such support staff and provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;

ensure it has suitable licences in place for any Third Party Software required (which is not issued or procured by TSG) to allow TSG and its subcontractors full use in relation to the Services provided;

not use the Services to receive, store or transmit material or data that is obscene, threatening, offensive, discriminatory, defamatory or in breach of confidence, infringes Intellectual Property Rights or other rights, gives rise to any cause of action against TSG in any jurisdiction or is otherwise unlawful;

inform TSG of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;

allow TSG or its designated subcontractors and third parties, global admin access to the Customer's relevant servers and networking systems for the duration of the Agreement;

where a Microsoft Product service is deployed / utilised as part of the Services TSG will be assigned to the cloud subscription/s as (as applicable) the Claiming Partner of Record (CPOR) and/or Digital Partner of Record (DPOR) and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) and Admin on Behalf of (AOBO) for a minimum of twelve (12) months from completion of the Services.

in respect of any Microsoft funded services, sign and deliver the Microsoft Proof of Execution (POE) within 7 days of the date of issue by Microsoft. In the event that the Customer does not return the POE within the 7 days' notice period, TSG may be entitled to charge the Customer the amounts directly and the Customer shall follow the payment terms in this Agreement;

provide appropriate hardware interface, software and access authorisation to enable remote diagnosis, should such capability be required;

provide all information and make available all resources as reasonably requested by TSG in the execution of its obligations under this Agreement, and ensure that all such information and resources are accurate in all material respects;

use all reasonable efforts to follow the reasonable instructions of TSG support personnel with respect to the resolution of defects;

gather all relevant information prior to requesting assistance in respect of any defects including detailed defect description, and procedures required to replicate a problem if possible. Any additional information which may help in the diagnosis of a defect should be included such as network configuration details; and

agree that if, in the course of performing the Services, it is reasonably necessary for TSG's performance of its obligations under this Agreement for TSG to access or use any equipment, software or data of the Customer (or which is in the possession of the Customer) then it shall where it is able to do so grant to TSG and any of its subcontractors a non-exclusive, royalty free, terminable licence to use the same solely for the purpose of delivering the Services only for as long as is strictly necessary to deliver such Services.

1.5 The Customer shall (unless otherwise specified in the Statement of Work or as otherwise set out in this Agreement):

use the Services only for lawful purposes and in accordance with this Agreement;

keep secure from third parties any passwords issued to the Customer by TSG;

fully virus-check all data supplied to TSG pursuant to this Agreement;

comply with all applicable laws and regulations with respect to its activities under this Agreement; and

carry out all other Customer responsibilities set out in this Agreement and the Statement of Work 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, TSG may adjust any timetable or delivery schedule set out in this Agreement as reasonably necessary.

1.6 All waiting time spent by any employees or agents of TSG (which includes any time which had been allocated to the Customer by TSG and which is not utilised by the Customer for any of the reasons set out in this Clause) as a result of any delay, variation or failure by the Customer to comply with the Agreement (which for these purposes includes any delays or postponements

by the Customer of any installation dates specified by TSG, of dates of scheduled service visits or otherwise) will be payable by the Customer to TSG at TSG's then current Rates.

1.7 Microsoft Funding and Incentives

Where any part of the Services pricing, onboarding fees, or ongoing charges are dependent upon Microsoft funding, incentives, rebates, or similar partner programmes ("Microsoft Funding"), the Customer acknowledges and agrees that:

a) Eligibility for Microsoft Funding is subject to Microsoft's rules, timelines, and requirements, which are outside TSG's control.

b) The Customer shall provide all information, approvals, consents, access, and actions reasonably required by TSG and/or Microsoft to secure such Microsoft Funding, within the timescales specified by TSG or Microsoft.

c) Where Microsoft Funding is reduced, delayed, or withdrawn as a result of the Customer's failure to meet Microsoft requirements, failure to act within required timescales, or provision of incomplete or inaccurate information, TSG shall be entitled to recover from the Customer the equivalent value of the lost Microsoft Funding.

d) Any such recovered amounts may be invoiced by TSG and shall be payable in accordance with the payment terms of this Agreement.

e) TSG shall not be liable for any loss of Microsoft Funding where such loss arises from factors outside TSG's reasonable control, including but not limited to changes in Microsoft policy, programme withdrawal, or Customer non compliance.

## 5. PROJECT ORGANISATION

1.1 If requested in writing by the Customer or specified in the Statement of Work, the Customer Representatives and TSG Representative shall have regular meetings to monitor and review the performance of this Agreement, to discuss any changes proposed in accordance with Clause 11 and to discuss the Service Level Arrangements.

1.2 Before each meeting, the Customer Representatives shall notify the TSG Representative, and vice versa, of any problems relating to the provision of the Services for discussion at the meeting. At each such meeting, the Parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next meeting.

## 6. PRICE AND PAYMENT

1.1 The Customer shall pay the Fees for the Services (including any Third-Party Services) as more fully set out in the relevant Statement of Work. If no Fee is quoted, the Fee shall be calculated in accordance with TSG's Rates set out in the Statement of Work as amended from time to time in accordance with this Agreement.

1.2 Clause 1.4 shall apply if the Services are to be provided on a time-and-materials basis. The remainder of this Clause 6 shall apply to all Fees, whether payable on a fixed price, annual or time and materials basis.

1.3 Where a Fee has been quoted, this is a best estimate based on the information given to TSG by the Customer and/or which is available at that time and may be based on a number of assumptions set out in the Statement of Work ("**Assumptions**"). If it materialises that in TSG's reasonable opinion, the information provided and/or Assumptions made are incorrect, inaccurate or have changed and/or that the proposed scope of Services is not feasible, TSG shall be entitled to charge (at TSG's current Rates) the Customer for any Out of Scope Services or other additional Services provided to those detailed in the Statement of Work together with all related costs and expenses incurred by TSG.

1.4 Where the Services are provided on a time-and-materials basis:

the Fees payable will be calculated in accordance with TSG's standard hourly or daily Rates which are calculated on the basis of Normal Business Hours;

TSG shall be entitled to charge an overtime rate for time worked outside Normal Business Hours, which will be notified to the Customer by TSG in advance of carrying out the Services outside of Normal Business Hours; and

TSG shall complete the relevant time recording systems to calculate the Fees for each invoice charged on a time and materials basis and on request will provide the Customer with a copy of the relevant timesheet.

1.5 TSG shall invoice the Fees in accordance with the payment intervals stated in the Statement of Work.

1.6 If Services are supplied outside of the agreed supported time periods stated in the Statement of Work, at the request of the Customer, or if work is carried out at the request of the Customer that is outside of the scope of any Statement of Work, or if additional work is required as a result of the Customer failing to comply with its obligations under this Agreement, then the Customer shall pay TSG at the then applicable Rate for those Services.

1.7 The Fees exclude:

actual, reasonable travel costs and expenses including airfares, hotels and meals incurred by TSG in performance of the Services ("**Expenses**"). TSG shall obtain the Customer's prior written approval before incurring any such Expenses;

(a) unless otherwise set out in the Statement of Work, the costs of packaging, insurance and transport of the Goods;

VAT or other relevant sales tax, which TSG shall add to its invoices at the appropriate rate.

1.8 The Customer shall pay each undisputed invoice for the Fees and Expenses in full and cleared funds (without deduction or set-off) within thirty (30) days of the date of such invoice unless otherwise agreed in writing by TSG or unless otherwise set out in the Statement of Work.

1.9 All payments by the Customer hereunder shall be in United Kingdom pound sterling unless otherwise agreed or set out in the Statement of Work and shall be paid to TSG's bank account as advised by TSG to the Customer in writing.

1.10 Should the Customer be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Fees payable shall be increased by the amount of such tax to ensure that TSG receives a sum equal to the amount to be paid under the applicable Statement of Work.

1.11 Without prejudice to any other remedy that TSG may have, if payment of the Fees or any part thereof is overdue then unless the Customer has notified TSG in writing that such payment is in dispute within ten (10) days of the receipt of the corresponding invoice TSG may, without prejudice to any other rights or remedies, charge the Customer interest on the overdue amount at the rate of four percent (4%) per annum above the base lending rate of Lloyds Bank Plc from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

1.12 The Customer shall not be able to dispute any amounts which have been paid by the Customer after a period of three (3) months has elapsed from the date of invoice.

1.13 TSG shall not be obliged to provide any of the Services and/or deliver any Goods while any duly issued invoice(s) remain unpaid under any Statement of Work, but should TSG choose to continue to do so, this shall not in any way be construed as a waiver of TSG's rights or remedies.

1.14 Subject to Clause 6.15 below, the Fees relating to the provision of Services may be increased on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index subject to a maximum uplift of 3.9%, applied at TSG's discretion in the preceding Initial Term-equivalent period.

1.15 For the avoidance of doubt, TSG may increase any fees related to Third-Party Services in line with any increases imposed upon TSG by such third parties upon reasonable notice and in line with the terms of the Licence Agreement and/or the Licence Agreement.

1.16 Notwithstanding and subject to Clauses 6.14 and 6.15, TSG reserves the right, on giving the Customer at least thirty (30) days' notice, to increase the Fees, at TSG's sole discretion, on an annual basis with effect from each anniversary of the Commencement Date. If the Customer does not agree with this increase, then they may terminate this Agreement upon thirty (30) days written notice and before such price increase takes effect. If TSG does not receive written notice within thirty (30) days, the Customer is deemed to have agreed to the amendment to the Fees.

## 7. WARRANTIES

1.1 The Customer warrants that:

it has the full capacity and authority to enter into and perform this Agreement;

it has the authority to grant any rights to be granted to TSG under this Agreement; and

it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to TSG and any of its subcontractors, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement.

1.2 TSG warrants and represents that:

it has the full capacity and authority to enter into and perform this Agreement;

it owns or has obtained valid licences, consents, permissions and rights to enable TSG to comply with this Agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Agreement including for the Customer's use and receipt of the Services, and TSG shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;

it will comply with all applicable laws in performing its obligations under this Agreement; and

the Customer's use of any TSG materials and/or third-party materials, including any materials supplied by TSG to the Customer, shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party.

1.3 Except for any warranties expressly set forth in this Agreement, the Services are provided on an "as is" basis, and Customer's use of the Services is at its own risk. TSG does not make, and hereby disclaims, any and all other express and/or implied warranties, statutory or otherwise, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice.

1.4 Unless otherwise agreed or set out in the Statement of Work, if the Customer accesses the Services through the public Internet or through a private circuit provisioned by a bandwidth provider of the Customer's choice, the Customer assumes responsibility for managing the relationship with this chosen provider, including service level commitments for issues found to be in the chosen provider's network.

1.5 If the Customer moves from one Customer Site to another site or makes changes to any Customer Site or opens a new location to be added to the Customer Sites, the Customer must notify TSG in advance. TSG may need to carry out an inspection of any cabling and advise the Customer of any work to bring the IT Infrastructure up to standard operating conditions at the new location in order to remain eligible for coverage. TSG will provide a Statement of Work if it is to provide additional resources or services in the case of any change at the Customer Sites or new Customer Sites for including as part of the Fees.

1.6 TSG will request approval from the Customer's Representatives before making any significant changes to the Services, unless in an emergency situation. TSG will arrange any Scheduled Downtime in advance with the Customer's Representatives. TSG is not responsible for Unscheduled Downtime that is due to anything outside TSG's control and TSG and its subcontractors may suspend some or all of the Services in order to carry out scheduled or emergency maintenance or repairs.

1.7 TSG will carry out network management routines to test the operations and functions of the relevant Services from time to time, notifying the Customer in advance.

1.8 TSG reserves the right to take any action that it perceives necessary to protect the Customer's systems even though this may impact on the Customer's business activities. TSG will make reasonable endeavours to inform the Customer by telephone or email in advance of such action, but such action will not be dependent on such notification having been given or acknowledged.

1.9 The Service Level Arrangements are specific to directly provided Services of TSG and do not relate to Third-Party Services (of which such Third-Party Services will be governed by their own relevant service levels) contained in the Licence Agreement or elsewhere.

1.10 TSG shall not in any circumstances be liable under its obligations in this Clause 7 if it can demonstrate that any failure of the Services was caused or contributed to by any Relief Event.

1.11 Notwithstanding the foregoing, TSG does not warrant that the Customer's use of the Services will be uninterrupted or error-free.

1.12 The Customer hereby warrants that it has not been induced to enter into this Agreement by any prior representations, nor has it relied on any oral representation made by TSG or upon any descriptions, illustrations or specifications contained in any catalogues and publicity material produced by TSG.

## 8. DATA PROTECTION

1.1 TSG shall promptly notify the Customer in writing of any loss or damage to the Customer Data. In the event of any loss or damage to Customer Data directly caused by TSG, TSG shall use commercially reasonable endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. TSG shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Customer Data caused by any third party.

1.2 For the purposes of this Clause 8, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.

1.3 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 8 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.

1.4 The Parties have determined that, for the purposes of Applicable Data Protection Laws, TSG shall process the personal data set out in the applicable Statement of Work, as a processor on behalf of the Customer.

1.5 Without prejudice to the generality of Clause 1.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to TSG for the duration and purposes of this Agreement.

1.6 In relation to the Customer Personal Data, the applicable Statement of Work sets out the scope, nature and purpose of processing by TSG, the duration of the processing and the types of personal data and categories of data subject.

1.7 Location Services

a) Certain Services provided by TSG may require the activation, use, or ongoing availability of device based or platform based location services ("Location Services"). These may include, but are not limited to: device management, security enforcement, lost/stolen device recovery, compliance monitoring, and policy application.

b) The Customer is responsible for ensuring that users enable and maintain Location Services on any device enrolled into the Services, including personal/BYOD devices where the Customer has authorised such enrolment.

c) The Customer acknowledges that where Location Services are disabled, unavailable, or restricted by the user, device, operating system, or manufacturer, TSG may be unable to deliver some or all elements of the Services. TSG shall have no liability for any failure, delay, or degradation in service performance arising from such limitations.

d) The Customer warrants that it has obtained all necessary consents, notices, and authorisations from its users (including employees, contractors, or third parties) required under applicable law to permit the use of Location Services as part of the Services.

e) TSG shall only access, process, or use location data for the purposes of delivering the Services, fulfilling its security obligations, or supporting the Customer's compliance requirements. Any processing of location data shall be subject to the Data Protection terms of this Agreement.

f) Where Location Services form part of the Customer's security, compliance, or operational posture, the Customer remains solely responsible for the consequences of users disabling or interfering with such functionality.

G) TSG process's location data only for security and service delivery purposes, does not use it for employee monitoring, and where location services are unavailable or restricted, certain service features may be limited without liability to TSG.

1.8 Without prejudice to the generality of Clause 1.3 TSG shall, in relation to Customer Personal Data:

process that Customer Personal Data only on the documented instructions of the Customer, unless TSG is required by Applicable Data Protection Law to otherwise process that Customer Personal Data. Where TSG is relying on Applicable Data Protection Law as the basis for processing Customer Personal Data, TSG shall notify the Customer of this before performing the processing required by the Applicable Data Protection Law unless those Applicable Data Protection Law prohibit TSG from so notifying the Customer on important grounds of public interest. TSG shall inform the Customer if, in the opinion of TSG, the instructions of the Customer infringe Applicable Data Protection Laws;

implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

ensure that any personnel engaged and authorised by TSG to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;

assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to TSG), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;

at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless TSG is required by Applicable Data Protection Law to continue to process that Customer Personal Data. For the purposes of this Clause 1.80 Customer Personal Data shall be considered deleted where it is put beyond further use by TSG; and

maintain records to demonstrate its compliance with this Clause 8 and allow for reasonable audits by the Customer or the Customer's designated auditor, for this purpose, on reasonable written notice.

1.9 The Customer hereby provides its prior, general authorisation for TSG to:

appoint processors to process the Customer Personal Data, provided that TSG:

(i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on TSG in this Clause 8;

(ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of TSG; and

(iii) shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to TSG's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify TSG for any Losses, damages, costs (including legal fees) and expenses suffered by TSG in accommodating the objection;

only transfer Customer Personal Data outside of the UK or EEA as required for the Purpose, provided that TSG shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of TSG, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).

1.10 TSG's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract insofar as it relates to the obligations set out in this Clause 8, or Applicable Data Protection Laws shall be limited to the amount set out in Clause 0.

1.11 To the extent that TSG cannot comply with a change to the Customer's instructions when processing Personal Data without incurring material additional costs:

TSG shall: (i) immediately inform the Customer, giving full details of the problem; and (ii) cease all processing of the affected data (other than securely storing those data) until revised instructions are received; and

any changes in the Customer's instructions that affect the pricing structure or commercial relationship between the Parties should go through an appropriate Change Order (as set out in Clause 11).

## 9. INTELLECTUAL PROPERTY RIGHTS

1.1 The Customer acknowledges and agrees that unless otherwise expressly set out in a Statement of Work, TSG and/or its licensors own all Intellectual Property Rights in its (i) Background Materials; (ii) the Services and Deliverables; and (iii) ideas, concepts, techniques and know-how discovered, created or developed by TSG during the performance of the Services that are of general application and that are not based on or derived from the Customer's business or Confidential Information (together the "**TSG Intellectual Property**"). Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of TSG Intellectual Property or any related documentation. TSG grants to the Customer a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use TSG Intellectual Property solely for the purposes of utilising the Services and/or Deliverables. The Customer shall not sub-license, assign or otherwise transfer the rights granted in this clause 9.1 without prior written consent of TSG, such consent not to be unreasonably withheld, conditioned or delayed.

1.2 TSG confirms that it has all the rights in relation to TSG Intellectual Property that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

1.3 The Customer shall indemnify TSG, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by TSG, arising by reason of claims that (1) TSG's possession of or use of the Customer's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Customer or any of its customers, modify, alter, replace combine with any other data, code, documents or other software, which alters TSG's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

1.4 TSG shall indemnify the Customer, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Customer, arising by reason of claims that (1) Customer's possession of or use of TSG's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) TSG, modifies, alters, replaces combines with any other data, code, documents or other software, which alters the Customer's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

1.5 If either Party ("**Indemnifying Party**") is required to indemnify the other Party ("**Indemnified Party**") under this Clause 9, the Indemnified Party shall:

notify the Indemnifying Party in writing of any IPR Claim against it in respect of which it wishes to rely on the indemnity at Clause 1.3 or Clause 1.4 (as applicable);

allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

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

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

1.6 If an IPR Claim is brought or in the reasonable opinion of TSG is likely to be made or brought, TSG may at its own expense ensure that the Customer is still able to use the Deliverables by either:

modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; or

procuring a license or permission to use the Deliverables on terms which are acceptable to the Customer, such acceptance not to be unreasonably withheld.

1.7 Except to the extent that TSG should reasonably have known or advised the Customer the foregoing provisions of Clause 1.6, TSG shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:

any use by or on behalf of the Customer of the combination with any item not supplied or recommended by TSG where such use of the Deliverables directly gives rise to the claim, demand or action; or

any modification carried out on behalf of the Customer to any item supplied by TSG under this Agreement if such modification is not authorised by TSG in writing where such modification directly gives rise to a claim, demands or action.

## 10. EXCLUSIONS, LIMITATIONS OF LIABILITY, WARRANTIES AND INDEMNITIES

1.1 The Customer acknowledges and agrees that, except as expressly provided in this Agreement, the Customer assumes sole responsibility for:

all problems, conditions, delays, delivery failures (including any of those concerning transfer of data) and all other loss or damage arising from or relating to the Customer's or its agents' or contractors' (including any existing service provider's) network connections, telecommunications links or facilities,

including the internet and acknowledges that the Services and the Deliverables may be subject to limitations, delays and other problems inherent in the use of such connections, links or facilities; and

loss or damage arising from or relating to any Relief Event.

1.2 This Clause 10 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:

any breach of this Agreement; and

any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

1.3 Nothing in this Agreement excludes or limits either Party's liability for:

death or personal injury caused by negligence;

fraud or fraudulent misrepresentation; or

any other liability which cannot lawfully be excluded or limited.

1.4 The Parties' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall:

in respect of damage to tangible property or physical damage, be limited to £250,000 (two hundred and fifty thousand pounds sterling);

in respect of any breach of Clauses 8, 9 and 12, be limited to £500,000 in the aggregate of the total Fees paid or payable for the affected Service; and

in relation to anything else, be limited to one hundred and twenty five percent (125%) of the total Fees paid or payable for the affected Service during the twelve (12) months preceding the date on which the claim arose.

1.5 Except as expressly and specifically provided in this Agreement:

neither Party shall have any liability for any Losses or damages which may be suffered by the other Party (or any person claiming under or through that Party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

(i) special damage even if the other Party was aware of the circumstances in which such special damage could arise;

(ii) loss of profits, revenue or turnover;

(iii) loss of anticipated savings or wasted expenditure (including management time);

(iv) loss of business opportunity;

(v) loss of goodwill and reputation; or

(vi) loss or corruption of data, where such loss or corruption is not due to the claiming Party's material breach of this Agreement, negligence or malicious act.

(b) in addition to the exclusions on liability set out in clause 10.5 (a), TSG shall not be liable for any breach of the Customer's system which would reasonably be expected to have been prevented or reduced by the Customer adopting the higher level of cyber security protection recommended by TSG above the Minimum Cyber Security Protection.

12.7 Except as expressly and specifically provided in this Agreement all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

1.8 Any indemnity set out in this Agreement shall not apply unless the Party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge and gives the other Party full opportunity to control the response to and the defence of such claim; including without limitation, the right to accept or reject settlement offers and to participate in any litigation provided that in no event shall the indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.

1.9 TSG shall maintain in force at its own expense:

Employers Liability Insurance to the sum of £10,000,000 (ten million pounds);

Public/Products Liability Insurance to the sum of £10,000,000 (ten million pounds);

Professional Indemnity Insurance to the sum of £5,000,000 (five million pounds); and

all other insurances required by any applicable laws.

**11. CHANGE ORDERS**

1.1 If the Customer wishes to make a Change to any Services it has requested, such change must be submitted to TSG in writing (**Change Order**). Such changes will be considered by TSG for feasibility and impact, in line with its Change Control Procedure under this clause 11. If such change is agreed then TSG reserves the right to increase the Fee for those Services and a Statement of Work will be issued for the additional fee.

1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Customer and TSG shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.

1.3 Any discussions which may take place between the Customer and TSG in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.

1.4 Discussion between the Customer and TSG concerning a Change shall result in any one of the following:

(a) no further action being taken; or

(b) a request to change the Services by the Customer; or

(c) a recommendation to change the Services by TSG.

1.5 Where a written request for a Change is received from the Customer, TSG shall, unless otherwise agreed, submit two copies of a Change Control Note signed by TSG to the Customer within three weeks of the date of the request.

1.6 A recommendation to amend the Services by TSG shall be submitted directly to the Customer in the form of two copies of a Change Control Note signed by TSG at the time of such recommendation. The Customer shall give its response to the Change Control Note within three weeks.

1.7 Each Change Control Note shall contain:

(a) the title of the Change;

(b) the originator and date of the request or recommendation for the Change;

(c) the reason for the Change;

(d) full details of the Change, including any specifications;

(e) the Fees, if any, of the Change;

(f) a timetable for implementation, together with any proposals for acceptance of the Change;

(g) a schedule of payments if appropriate; and

(h) details of the likely impact, if any, of the Change on other aspects of this Agreement.

1.8 For each Change Control Note submitted by TSG the Customer shall, within the period of the validity of the Change Control Note:

(a) allocate a sequential number to the Change Control Note; and

(b) evaluate the Change Control Note and, as appropriate:

(c) request further information; or

(d) arrange for two copies of the Change Control Note to be signed by or on behalf of the Customer and return one of the copies to TSG; or

(e) notify TSG of the rejection of the Change Control Note.

1.9 A Change Control Note signed by the Customer and by TSG shall constitute an amendment to this Agreement and the Services.

**12. CONFIDENTIALITY**

1.1 Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by the relevant Statement of Work.

1.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its employees, agents, sub-contractors and professional advisers, in each case under the same conditions of confidentiality as set out in Clause 1.1.

1.3 The obligations of confidentiality set out in this Clause 12 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the disclosing Party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving Party without use of or reference to the Confidential Information.

**13. TERM AND TERMINATION**

On expiry of the Initial Term, this Agreement shall automatically renew for a period equal in length to the Initial Term, unless terminated in accordance with this Agreement or otherwise expressly agreed in writing.

1.1 This Agreement shall commence on the Commencement Date and shall remain in full force for the Initial Term unless otherwise agreed by the Parties or earlier terminated in accordance with the terms of this Agreement. On expiry of the Initial Term and at the end of each successive Subsequent Term, this Agreement shall automatically renew for the Subsequent Term, unless the Customer provides TSG with written notice to terminate, not later than ninety (90) days before the end of the Initial Term or the relevant Subsequent Term.

1.2 Where the Customer takes more than one Service from TSG under separate Statements of Work, TSG shall align the expiry dates of those Services so that they expire on the same date ("co-terminus"). Where a new Service is added part way through an existing contract term, the end date of all Services shall be extended to align with the end date of this new service, with fees for existing Services calculated on a pro-rata basis for any extended period. This clause applies across all Care Services and any other Managed Services taken by the Customer under this Agreement.

1.3 TSG reserves the right to terminate this Agreement, without cause, upon thirty (30) days written notice.

1.4 Without prejudice to any rights that the Parties have accrued under this Agreement or any of their respective remedies, obligations or liabilities, a Party may terminate this Agreement and the relevant Statement of Work with immediate effect by giving written notice to the other Party if:

the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified to do so;

the other Party breaches any of the terms of Clause 8, Clause 12 or Clause 17; or

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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

For the purposes of this Clause 14.2 (b), "material breach" means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

1.5 If for any reason a contract between a third party and TSG relating to TSG's right to provide the Third-Party Services which is the subject of the Agreement is terminated, then the Agreement shall automatically terminate, save that where the contract relates to other Deliverables other than that Third-Party Service, termination of the Agreement shall operate only in so far as it relates to such Third-Party Services.

1.6 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

1.7 On termination of this Agreement for any reason:

TSG shall immediately cease provision of the Services;

the Customer shall pay any and all invoices and sums due and payable up to and including the date of termination including (1) all remaining amounts owing up to the end of the Term or the Subsequent Term (as applicable); (2) any Software Licence fees and (3) any termination fees that TSG incurs from any of its third parties as a consequence of such early termination. TSG shall use reasonable endeavours to mitigate any loss but the Customer acknowledges and agrees that any Third Party Supplier fees may not be mitigated by TSG and the Customer shall not hold TSG responsible if its incurs full termination fees; and

each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party.

1.8 Neither Party shall be entitled to terminate this Agreement, save as provided in this Clause 13 or elsewhere in this Agreement, or by mutual consent and on agreed terms, or due to a Force Majeure event.

1.9 The provisions of Clauses 6, 7, 8, 9, 10, 12, 13, 14, 15 and 17 shall survive termination of any Statement of Work or this Agreement.

## 14. STAFF TRANSFER AND NON-SOLICITATION

1.1 The Customer warrants to TSG that none of its employees nor the employees of any other party will become employees of TSG by reason of the provision of Services by TSG under the Agreement, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "**Regulations**") or otherwise. The Customer will repay to TSG any costs, expenses, damage awards, fines, court or tribunal orders and all other liabilities or other sums for which TSG is or may be liable by reason of the application or alleged application of the Regulations in relation to provision of those Services by TSG, including any compensation or damages which TSG may be required to pay to any such person for any reason.

1.2 The Customer acknowledges the investment made by TSG in the training of TSG's personnel and the commercial interest which TSG has in retaining their services.

1.3 Neither Party shall solicit the other Party's staff or contractors who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of twelve (12) months thereafter. For the purposes of this Clause 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.

1.4 In the event that either Party is in breach of Clause 1.2 above then the Party in breach shall pay to the other by way of liquidated damages an amount equal to fifty percent (50%) per cent of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to either Party's ability to seek injunctive relief.

1.5 The Parties hereby acknowledge and agree that the formula specified in Clause 1.4 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

## 15. RELIEF EVENTS

Subject to Clause 1.3, and notwithstanding any other provision of this Agreement, TSG shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

## 16. FORCE MAJEURE

1.1 TSG shall have no liability to the Customer under this Agreement and the Customer shall have no obligation to pay the Fees if TSG is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by an event of Force Majeure except to the extent that TSG could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of this Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), provided that:

the Customer is notified of such an event and its expected duration; and

TSG uses all reasonable endeavours to mitigate, overcome or minimise the effects of the event of Force Majeure concerned,

and that if the period of delay or non-performance continues for four (4) weeks or more, the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other Party.

## 17. ANTI-BRIBERY AND MODERN SLAVERY

1.1 TSG shall:

(a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010;

promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by TSG in connection with the performance of this Agreement.

1.2 TSG shall procure that any person associated with TSG, who is performing services in connection with this Agreement, adheres to terms equivalent to those imposed on TSG in this Clause 17 ("**Relevant Terms**"). TSG shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.

1.3 For the purpose of this Clause 17, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 17 a person associated with TSG includes any subcontractor of TSG.

1.4 In performing its obligations under the Agreement, TSG shall:

comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force the Modern Slavery Act 2015; and

(a) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

**18. WAIVER**

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**19. SEVERANCE**

1.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

1.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

**20. ENTIRE AGREEMENT AND AMENDMENT**

1.1 This Agreement (and its references to website address to further documentation, the Licence Agreements, the Statement of Works and the Licence Agreement constitutes the entire Agreement between the Parties and supersedes all previous discussions, correspondence,

negotiations, arrangements, understandings and Agreements between them relating to its subject matter.

1.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

1.3 Each Party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

1.4 No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

## 21. ASSIGNMENT AND SUBCONTRACTING

1.1 TSG may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Agreement to any person at any time.

1.2 The Customer shall not without the prior written consent of TSG (such consent not to be unreasonably withheld or delayed) assign, transfer or charge or deal in any other manner with either the benefit or the burden of this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

## 22. NO PARTNERSHIP OR AGENCY

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, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## 23. THIRD-PARTY RIGHTS

This Agreement is made for the benefit of the Parties, to it and (where applicable) their successors and permitted assigns, and Microsoft (in respect of enforcing the terms of the Licence Agreement) and is not intended to benefit or be enforceable by anyone else.

## 24. NOTICES

1.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.

1.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

1.3 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. For the purposes of this Clause, "writing" shall include e-mail.

**25. DISPUTE RESOLUTION**

1.1 If a dispute arises under this Agreement ("**Dispute**"), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process ("**Dispute Notice**").

1.2 If the Parties are unable to resolve the Dispute within twenty one (21) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five (5) Business Days thereafter):

(a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement ("**Designated Representative"**); and

notify the other Party in writing of the name and contact information of such Designated Representative.

1.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party will be honoured.

1.4 If the Parties are unable to resolve the Dispute within fourteen (14) calendar days after the appointment of both Designated Representatives, the Parties shall submit to an expert determination or otherwise submit to mediation in order to resolve the Dispute.

**26. MARKETING**

Both Parties agree to reasonably cooperate in connection with the creation of mutually beneficial marketing communications, which shall include, at a minimum, a press release, case study and a reference to Customer on TSG's website, provided that in no event shall either Party use the name, trademarks or other proprietary identifying symbols of the other Party without such Party's prior written consent, which consent shall not be unreasonably withheld or delayed.

**27. GOVERNING LAW AND JURISDICTION**

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

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

**Section B – Managed Services (including System Care, People Care, Cloud Care and Cyber Care) Terms**

**INTERPRETATION**

1.1. These additional definitions apply in this Section **B** (alongside the definitions in Section **A**).

| | |
|---|---|
| **Component** | means any component or combination of components of the Supported Business System, for example, an item of hardware or peripherals, software, the whole or part of a network or an element of a communications elements. |
| **Cloud Care** | means the management of the Customer's cloud services by TSG as set out within the Statement of Work. |
| **Cyber Care** | means the cybersecurity threat detection, monitoring, and incident response capabilities as set out within the Statement of Work. |
| **Hosting Services** | Means the remote or on-premise support provided by TSG as set out in the Statement of Work |
| Managed Services | means the Hosting Services and support service described in the Statement of Work (including System Care and/or People Care and/or Cyber Care as applicable) to be performed by TSG in accordance with this Agreement and these Managed Services Terms. |
| **Supported Site** | the address for installation as set out in the Statement of Work. |
| **Supported Business System** | means that part of the Customer's network, hardware or software covered by the Managed Services as identified in the Statement of Work. |
| **System Care** | means the remote system support provided to the Customer by TSG as set out within the Statement of Work. |
| **People Care** | means the on-premise support provided to the Customer by TSG Personnel as set out within the Statement of Work |
| **Provider Software** | means a software product or software suite or other software developed and/or licensed by a third-party provider. |
| **TSG Personnel** | means the experienced IT professionals deployed by TSG to carry out the Managed |

| | |
|---|---|
| | Services as part of the People Care provision (as set out within the Statement of Work) |

## 2. MANAGED SERVICES

2.1. TSG will provide the Managed Services in accordance with the Statement of Work and the terms of Section A with all due care, skill and ability during the Term and a Subsequent Term (if applicable) unless earlier terminated for any reason.

2.2. TSG shall provide the Managed Services in accordance with the Service Level Arrangements as stated in the Statement of Work.

2.3. The Customer shall remain responsible for the use of the Managed Services under its control including any use by third parties that the Customer has authorised to use the Managed Services.

2.4. The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by TSG in writing. This includes informing TSG promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, TSG will work with the Customer to alleviate the situation as quickly as possible. The Parties shall discuss and agree appropriate action (including suspending the Managed Services).

2.5. The Customer shall not provide the Managed Services to third parties unless otherwise indicated in the Statement of Work or as otherwise agreed by TSG in writing.

2.6. The Customer acknowledges that certain conditions outside of TSG's control may adversely impact the ability of TSG to perform functions of the Managed Services. Examples of such conditions are listed below (as a non-exclusive list):

(a) failure of customer hardware, software or operating system;

(b) partial or full failure of Third-Party Services;

(c) network connectivity issues between Local System Components and TSG's platform; and/or

(d) network connectivity issues between Local System Components and its third party's servers.

2.7. TSG reserves the right to:

(a) modify TSG's System, its network, system configurations or routing configuration; or

(b) modify or replace any Hardware in its network or in equipment used to deliver any Managed Service over its network,

provided that this has no adverse effect on TSG's obligations or performance under Section A and its provision of the Managed Services or the Service Level Arrangements. If such changes will have an adverse effect, TSG shall notify the Customer and the Parties shall follow the Change Control Procedure.

2.8. If TSG breaches its obligations in paragraph 2.1 of these Managed Services Terms, TSG shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.

2.9. The Managed Services acquired by the Customer are solely for the Customer's own internal use and not for resale or sub-licensing, unless otherwise agreed in writing. TSG shall be available for general questions via telephone, and/or chat through the client portal (communicated separately and may be charged) in regard to the Microsoft Products and Managed Services.

2.10. TSG may suspend, revoke or limit use of the Managed Services, wholly or partly (i) in case of late payments, (ii) if TSG in its absolute discretion finds that a risk to the overall integrity of the Managed Services has occurred, or (iii) other reasonable grounds exist. If the cause of the suspension is reasonably capable of being remedied, TSG will provide the Customer notice of what actions the Customer must take to reinstate the Managed Services and/or Microsoft Products. If the Customer fails to take such actions within a reasonable time, TSG may terminate the applicable Managed Service.

2.11. TSG is entitled to amend the terms of Section A and these Managed Services Terms in order to reflect any changes and updates received from its third parties or otherwise if TSG has reasonable grounds for such amendment.

2.12. The Managed Services do not extend to:

(a) any Component not specified in the Statement of Work including any Component of the Supported Business System which is in any way changed from that included in the Statement of Work;

(b) any Component which was, in TSG's reasonable opinion, operating in an unstable or unsuitable manner prior to the Commencement Date or that exceeds five years of age;

(c) any work arising as a result of any breach by the Customer of any of its obligations under the Agreement;

(d) any work arising from any incident, wilful act or any error or omission in relation to, or affecting, the operation of the Supported Business System or any other cause (except for wear and tear) which is not due to the neglect or default of TSG;

(e) any failure or defect caused by a network, hardware or software not covered by the Agreement;

(f) software bugs, failures or defects due to manufacture or design defects over which TSG has no control;

(g) refurbishment or repair of casings or outer surfaces;

(h) work arising from anything done to or with any network, hardware or software that is not identified in the Statement of Work, whether or not that network, hardware or software is attached or linked to the Supported Business System;

(i) reinstatement of customised versions of the standard desktop/operating system;

(j) reinstatement of the Customer's software and data not identified within the Statement of Work;

(k) any consultancy or training;

(l) integration of the Supported Business System or any part of it with other systems unless specified within the Statement of Work;

(m) cleansing of viruses, except where the Customer has bought a TSG-recommended anti-virus/spyware/malware product through TSG and then only for the viruses, spyware or malware covered by purchased product;

(n) resolving the consequences of security breaches and incompatibilities in hardware and/or software;

(o) upgrading operating systems;

(p) consumable supplies or accessories such as magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumables by the Supported Business System manufacturer(s), unless listed in the Statement of Work;

(q) any Supported Business System in respect of which a notice has been served by TSG under clause 8 of this Section **B** (Proactive Visits and System Audits);

(r) any work arising by reason of any maintenance or repair work carried out in respect of the Supported Business System by a third party not previously approved in writing by TSG;

(s) in respect of any smartphones, personal digital assistants or other mobile solutions included in the Supported Business System, anything other than support of the Provider Software to enable synchronisation with the Customer's server as specified in the Statement of Work; and

(t) any services which are specifically excluded in the Statement of Work.

2.13. If the relevant Statement of Work allocates the Customer a limited number of Tickets within the Initial Term or any Subsequent Term, which are not used by the Customer before the end of the Initial Term or Subsequent Term, such Tickets will not be rolled over into any Subsequent Term and will be lost without any liability on the part of TSG.

## 3. RESPONSIBILITIES OF TSG

3.1. In relation to the Managed Services specifically and notwithstanding TSG's obligations under paragraph 2.1 of these Managed Services Terms, TSG shall (unless otherwise specified in the Statement of Work or as otherwise set out in Section A):

(a) provide the Managed Services during Normal Business Hours, unless otherwise stated in the relevant Statement of Work;

(b) staff TSG support desk with a team of skilled individuals (whether subcontracted or not);

(c) if the Statement of Work includes the provision of People Care as part of the Managed Services, deploy TSG Personnel to the Customer Site to carry out the Managed Services in the Statement of Work;

(d) maintain a team skilled in the platform and with knowledge of the systems developed to deliver the solution;

(e) use reasonable endeavours to respond to a valid Ticket within the response time set out in the Statement of Work;

(f) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;

(g) undertake a regular account review if requested by the Customer, to discuss the Customer's service needs and ensure that the Services are in alignment with its needs;

(h) use commercially reasonable endeavours to follow the instructions of the Customer and will remain courteous during any communications with Customer personnel;

(i) provide the Customer with reasonable co-operation in relation to this Agreement;

(j) use reasonable endeavours to rectify defects or malfunctions in the Managed Services on the telephone or by use of remote access in accordance with the relevant Statement of Work;

(k) use reasonable endeavours to return the Supported Business System to service;

(l) if a defect or malfunction in the Supported Business System cannot be resolved on the telephone or by remote access and the Statement of Work includes site visits or People Care, TSG will endeavour to visit the Customer Site within the response times set out in the Statement of Work;

(m) at its discretion provide a permanent replacement part for the Supported Business System, either new or refurbished, and on exchange that part becomes the property of the Customer, and the faulty part replaced becomes the property of TSG;

(n) at its discretion repair the Supported Business System away from the Customer Site when it considers it necessary to do so;

(o) at its discretion, may lend the Customer temporary replacement equipment (if compatible and available) while repairs are carried out. Replacement equipment loaned to the Customer remains TSG's property and the Customer must return it to TSG on demand. The Customer is entirely responsible for any replacement equipment and will indemnify TSG in respect of any direct loss or damage to that equipment; and

(p) TSG may make use of new releases, patches and updates of Provider Software to rectify known problems.

3.2. TSG shall be under no obligation to provide the Managed Services to the Customer in the following circumstances (unless specified under the Statement of Work);

(a) unauthorised use of the Services by the Customer or use otherwise than in accordance with Section A;

(b) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;

(c) providing any other services not covered herein; and

(d) providing the Managed Services to the Customer where such support would have been unnecessary if the Customer had implemented update(s) and upgrade(s) supplied or offered to the Customer.

3.3. TSG does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Whilst TSG will use reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, TSG cannot guarantee that such events will not occur. Accordingly, TSG disclaims any and all liability resulting from or related to such events.

3.4. The time taken by TSG to respond to a Ticket will only be measured during the hours set out in the Statement of Work.

## 4. RESPONSIBILITIES OF THE CUSTOMER

4.1. The Customer shall (unless otherwise specified in the Statement of Work or as otherwise set out in Section A):

(a) keep each component of the Customer's Operating Environment in the environmental conditions recommended by TSG or any manufacturer(s) and ensure that the external surfaces, cables and fittings of the Customer's Operating Environment are kept clean and in good condition;

(b) ensure that the Customer's Operating Environment is only used by properly trained staff in accordance with the manufacturer(s)' instructions, current computing practice and instructions issued by TSG from time to time;

(c) ensure that only the Customer's IT support personnel or other personnel authorised by TSG adjust, modify, configure, maintain, repair, replace or remove any component of the Customer's Operating Environment;

(d) permit TSG to install the current version of software required to provide the Managed Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;

(e) provide TSG at least seven (7) Business Days' notice in advance of any intention or move to change when applicable Customer-side Equipment, Components or Customer's Operating Environment or data-feeds that will directly impact the Managed Services. If such notice has not been received on time, TSG will have to make additional effort to return the Customer's systems to an acceptable state for continued support, and will charge accordingly at its then standard charging Rates;

(f) where TSG provides remote diagnostic services in respect of the Supported Business System, the Customer will put and keep in place a remote access link to the Supported Business System which is acceptable to TSG. The Customer agrees that TSG shall have the right at any time to access the Supported Business System remotely for the purpose of providing the Managed Services. The Customer acknowledges and agrees that the remote diagnostic services may be undertaken at times where the Customer is unavailable (for example, outside the Customer's working hours) and TSG shall have the right to perform any diagnostic and maintenance services as it sees fit even if it has not been possible to contact the Customer and inform the Customer of the proposed performance of those services;

(g) unless specifically included in the Statement of Work, the Customer is responsible for the cost of any Provider Software upgrades which TSG advises are required;

(h) undertake to change provision of any existing remote access link to TSG provision at the first available opportunity either prior to or following the commencement of the Managed Services providing that no penalty is incurred by the Customer; and

(i) be solely responsible for any connection charges, line rental charges and call charges in relation to any part of the Supported Business System.

4.2. The Customer shall not knowingly store, distribute or transmit any material through the Managed Services that:

(a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images; and/or

(d) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities.

4.3. Whilst TSG will endeavour to maintain its side of the remote access link to the Supported Business System, except for liability which is not excluded or limited, TSG will not be liable for any loss suffered by the Customer if for any reason the remote access link is unavailable or interrupted for any period of time and outside of its control.

## 5. SECURITY

5.1. TSG shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to any and all Managed Services, TSG's System and related networks or resources and the Customer Data, in accordance with Good Industry Practice.

5.2. The Customer shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to the Customer's Operating Environment. TSG shall not be responsible for any unauthorised access to the Customer's Operating Environment by means of hacking, any unauthorised access of the Customer's Operating Environment with intent to commit or facilitate the commission of an offence or any unauthorised modification of the Customer's Operating Environment by a third party.

5.3. Each Party shall promptly inform the other if it suspects or uncovers any breach of security, and shall use all commercially reasonable endeavours to promptly remedy such breach.

## 6. WARRANTIES

6.1. The Customer warrants that TSG's use in the provision of the Managed Services or otherwise in connection with this Agreement of any third-party materials, including any Hardware supplied by the Customer to TSG for use in the provision of the Managed Services or otherwise in connection with this Agreement, shall not cause TSG to infringe the rights, including any Intellectual Property Rights, of any third party.

6.2. The Customer is solely responsible for securing and backing up its data unless forming part of the Services. TSG is not responsible or liable for the deletion of or failure to store any Customer Data and other communications maintained or transmitted through the use of the Managed Services or Microsoft Products unless it forms part of the Services.

6.3. TSG does not warrant uninterrupted or error-free operation of the Managed Services and Microsoft Products. Unless otherwise agreed in writing, the Managed Services and Microsoft Products are designed, manufactured and intended for low-risk activities.

6.4. TSG warrants that it shall perform the Managed Services in a professional manner and in line with the Service Level Arrangements.

6.5. The warranties provided in these Managed Services Terms are the exclusive warranties from TSG in relation to the Managed Services.

## 7. Limitation of Liability

7.1. Subject to clause 1.3 of Section **A**, the Customer's sole and exclusive remedy for any particular system availability failure in respect of the Managed Services, TSG shall either:

7.1.1. correct the non-conforming Managed Service at no additional charge to the Customer; or,

7.1.2. in the event TSG is unable to correct the non-conforming Managed Service after good-faith efforts, or fails to meet the response times within the Service Level Arrangements;

the Customer will receive service credits in the amounts provided in the Service Level Arrangements. Service credits are not available for any other aspect of any services provided by TSG, other than the Managed Services.

7.2. Except as expressly and specifically provided in Section A the Customer assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. TSG shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to TSG by the Customer in connection with the Managed Services, or any actions taken by TSG at the Customer's direction.

7.3. TSG shall not have any liability for any loss or damage arising directly or indirectly from any cyber incident.

## 8. Proactive Support Visits and System Audits

8.1. Prior to the Commencement Date, TSG may, where appropriate, during Normal Business Hours inspect the Supported Business System, or any Component, at the Supported Site to confirm that it is, in TSG's reasonable opinion, in full working order in accordance with the manufacturers' requirements. If work is required to put the Supported Business System (or any Component) into full working order, TSG will notify the Customer accordingly.

8.2. TSG will carry out the support visits specified in the Statement of Work during Normal Business Hours, the purpose of which is to provide general support in respect of the operation of the Managed Services. Any unused support visits that remain at the end of the Initial Term and/or any Subsequent Term will automatically lapse and shall not be rolled into the next Subsequent Term.

8.3. TSG will, as often as TSG thinks necessary and (except in the event of an emergency) on reasonable notice, carry out a System Audit within the Normal Business Hours to confirm that, in TSG's opinion, the Supported Business System is in reasonable operating condition. If work is required to put any Component into full working order, TSG will notify the Customer accordingly.

8.4. TSG will give the Customer written notice if, in its reasonable opinion:

(a) any Component of the Supported Business System is identified as "end of life";

(b) if the Component becomes beyond reasonable repair or spare parts become not readily available;

(c) if faults in and/or the Component's condition are such that overhaul or replacement is necessary;

(d) if the Component is no longer economically viable to maintain; or

(e) if the Component requires upgrading or updating.

8.5 If the Customer does not, within 15 days of TSG's notification and at its own expense:

(a) have the work referred to in paragraphs 8.1 or 8.3 carried out; or

(b) or replace the Component as referred to in paragraph 8.4,

may on written notice exclude that Component from the Managed Services.

## 9 Hosting Services

9.1 Where TSG provides the Hosting Services:

9.1.1 TSG shall not be liable or have any responsibility whatsoever for the provision or maintenance of any licensing of Third Party Software (or breach of such licences) and the Customer agrees to indemnify TSG against any and all costs, claims, expenses, losses or similar, for any threat or claim, or anticipated threat or claim, that such services infringe any rights in the Third Party Software itself or its licence terms.

9.1.2 The Customer is under an obligation to inform TSG of any lapse or termination of any Third Party Software licences with reasonable notice to enable TSG to cease hosting where the Customer no longer requires the Hosting Services of all or any Third Party Software previously provided by TSG.

9.2 TSG reserves the right to decide to change hosting provider at any time, without consent from the Customer.

**Section C – Professional Services Terms**

These additional definitions apply in this Section **C** (alongside the definitions in Section **A**).

1. **Definitions**

The following definitions in this paragraph 1 apply in these Professional Services Terms.

**Acceptance Criteria:** means the acceptance criteria as specified in paragraph 2.2 of these Professional Services Terms or referred to in a Statement of Work or as otherwise agreed by the Parties expressly in writing after the date of the Statement of Work against which the Acceptance Tests are to be carried out to determine whether the Deliverables meet the Statement of Work, are satisfactory and ready to be invoiced.

**Acceptance Tests and Acceptance Testing:** means the acceptance tests and testing as specified or referred to in the Statement of Work or as agreed between the Parties, to be undertaken to determine whether the Deliverables meet the Acceptance Criteria.

**Default**: means a material default of a party in complying with its obligations under the Statement of Work and/or the Agreement (as applicable to the Services).

**Delay**: means a delay in the successful achievement of a Milestone.

**Issues List:** means a written list of the non-conformities to the Acceptance Criteria for a specific Deliverable.

**Milestone**: means a date by which all or a part of the Services and/or all or one of the Deliverables are estimated to be completed, as set out in the Statement of Work.

**Project**: means the details as described in the relevant Statement of Work.

**1. TSG'S RESPONSIBILITIES**

1.1. TSG shall use reasonable endeavours to provide the Professional Services to the Customer, in line with Good Industry Practice.

1.2. TSG shall use reasonable endeavours to meet any performance dates agreed with a Customer, but any such dates shall be estimates only and time for performance by TSG shall not be of the essence of this Agreement.

## 2. CUSTOMER'S OBLIGATIONS

2.1. the customer shall:

2.2. co-operate with TSG in all matters reasonably required relating to the professional services;

2.3. provide in a timely manner such access to the customer's site and data, and such office accommodation and other facilities, as is reasonably requested by TSG;

2.4. provide in a timely manner such access to the customer's personnel as is reasonably required by TSG to fulfil the professional services;

2.5. provide in a timely manner such information as TSG may reasonably request in order for it to comply with its obligations under this agreement, and ensure that such information is accurate in all material respects; and

2.6. be responsible (at its own cost) for preparing the relevant premises for the supply of the professional services.

## 3. ACCEPTANCE OF THE PROFESSIONAL SERVICES

3.1. The relevant Statement of Work shall specify the Deliverables that are to be subject to Acceptance Testing and provide a framework for the nature of the testing that will be required.

3.2. In relation to any Acceptance Testing:

(a) The Customer shall have a reasonable period of time, up to five (5) Business Days unless otherwise specified in the Statement of Work, from TSG's delivery of each Deliverable under the relevant Statement of Work (the "**Acceptance Period**") to confirm that such Deliverable conforms to the Acceptance Criteria. If the Customer determines that a Deliverable does not conform to the Acceptance Criteria, the Customer shall by the last day of the Acceptance Period provide to TSG an Issues List of the non-conformities to the Acceptance Criteria;

(b) The Customer shall use best efforts to correctly and efficiently ensure appropriate Acceptance Testing in relation to any Deliverable which is subject to Acceptance Tests and shall notify TSG within the Acceptance Period (as defined in paragraph 2.2 (a) of these Professional Services Terms) if any of the Deliverables do not conform to the Acceptance Criteria. In the event that Customer has undertaken the Acceptance Testing within the Acceptance Period and fails to reject any Deliverable within the relevant Acceptance Period, for all purposes under these Professional Services Terms such Deliverable shall be deemed accepted as if the Customer had issued a written acceptance thereof. Once the Deliverable has been accepted by the Customer and payment has been settled in accordance with Clause 6 of Section A, the Deliverable shall become the property of the Customer. For the avoidance of doubt, should any non-conformities be found in earlier stages of the Deliverables but which were not highlighted to TSG during the applicable Acceptance Period, such non-conformities shall not be subject to the remedies as set out in paragraph 2.2 (c) of these Professional Services Terms below.

(c) If there are any non-conformities within any Deliverable, which have been highlighted by the Customer or TSG during the Acceptance Period and whereby the Deliverable has not

been accepted by the Customer for this reason and such non-conformity is a directly attributable act or omission on the part of TSG (and not subject to a Change Order (attributable to the Customer's acts or omissions including inadequate Acceptance Testing) TSG shall (without prejudice to the Customer's other rights and remedies) carry out all necessary remedial work without additional charge as part of the next Deliverable which shall accordingly be modified.

(d) If any non-conformity cannot be remedied by TSG due to an error, defect or fault which TSG is able to demonstrate to the reasonable satisfaction of the Customer to be outside TSG's control and which prevents TSG being able to remedy such non-conformity, then TSG reserves the right to terminate work on that specific Deliverable. TSG agrees not to charge the Customer any amounts paid or payable by Customer to TSG which specifically relate to the non-conforming Deliverable which cannot be remedied.

## 4. CANCELLATION

4.1. If the Customer cancels the Services prior to them being completed (either completely or by rescheduling them) or if TSG is prevented or delayed from performing the Services by any act or omission of the Customer or the Customer's personnel, then:

(a) the Customer shall be liable to pay TSG compensation for any losses, costs or expenses incurred by TSG by reason of that cancellation, delay or prevention (which may include but is not limited to software costs and travelling expenses); and/or

(b) in the case of complete cancellation of the Services, TSG may terminate the Agreement immediately on giving written notice to the Customer.

4.2. For the avoidance of doubt, the Customer shall also remain liable for all unpaid Fees and other amounts that are outstanding on the date the Customer (or TSG) cancels the Services.

## 5. COMPLETION

5.1. Following the completion of all Deliverables, the final status meeting and status report will confirm Project closure. Any issues with the content of the final status report should be reported by the Customer within five (5) days of receipt unless otherwise agreed by TSG, otherwise the Project will be considered closed. Completion shall take place on the earlier of:

(a) TSG delivering the materials listed in the "Deliverables" section of the Statement of Work; or

(b) The Customer or TSG terminating the Project in accordance with the provisions of the Agreement.

## 6. REMEDIAL ACTIONS

6.1. If either Party becomes aware of a Delay or a Default then:

(a) That Party shall via its Representative notify the other Party via its Representative and each of them shall exchange information and will jointly assess the impact of the Delay or Default and discuss possible remedies and agree a suitable course of action to remedy that Delay or Default (as applicable) (the "**Remedial Plan**");

(b) When agreeing a Remedial Plan, the Representatives shall agree how any additional costs incurred in remedying the Delay or Default will be apportioned and in doing so shall take into account:

(i) Each Party's responsibilities as set out in the Statement of Work; and

(ii) The Party responsible for the Delay or Default.

(c) In circumstances where the Representatives cannot agree a Remedial Plan in respect of a party's Delay or Default, the other Party shall be entitled to escalate the failure to agree a Remedial Plan in accordance with Clause 26 of Section **A** (Dispute Resolution);

(d) Once the Remedial Plan is agreed, the Parties will start work on the actions set out in it;

(e) If a Remedial Plan is agreed, but one Party fails to implement or successfully complete the Remedial Plan by the required Remedial Plan completion date, the other Party may:

(i) give the defaulting party a further opportunity to resume full implementation of the Remedial Plan; or

(ii) where the option in sub-clause (i) above has been tried already or is not considered appropriate, escalate any issues arising out of the failure to implement the Remedial Plan in accordance with Clause 26 of Section **A** (Dispute Resolution); and/or

(iii) where the option in sub-clause (i) above has been tried but has failed, terminate the Agreement under Clause 14.2 of Section **A**.

(f) Subject to Clause 11.4 of Section **A** (Limitation of Liability) and Clause 17 of Section **A** (Force Majeure), each Party shall be entitled to reimbursement from the other Party (the defaulting party) of those costs or losses sustained or incurred which have arisen directly from the defaulting party's Delay or Default, provided that:

(i) the Party to be reimbursed has taken such steps as are commercially and reasonably necessary to mitigate its losses; and

(ii) the Representatives have agreed the amount to be reimbursed.

**Section D – Software Licensing Maintenance And Upgrade Services**

Where a Customer requests that TSG provide Third Party Software and additional Maintenance and Upgrade Services, these supplemental terms and conditions shall apply, in addition to those in Section A.

| | |
|---|---|
| **End of Life** | the version of software that has reached or is reaching the end of its useful life, and will no longer be supported by the Third Party Software Supplier, or their licensors. |
| **Maintenance Release** | a release which corrects faults, adds functionality or otherwise amends or upgrades the Third Party Supplier, but which does not constitute a New Version. |
| **Maintenance and Upgrade Services** | the issuing of Maintenance Releases and New Versions<br><br>of the Services. |
| **New Version** | any new version of the Third Party Software which from time to time is publicly marketed and offered for purchase by TSG in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product. |
| **Third Party Software Supplier** | the third party supplier of the Third Party Software. |

1. **Third Party Software Licencing and Licence Agreement**

1.1 In consideration of the Fee paid by the Customer to TSG, TSG shall procure that the Third Party Software Supplier grants to the Customer a non-exclusive, revocable licence for to use the Third Party Software for the Customer's internal business purposes, subject to the terms of this Agreement and the applicable Licence Agreement.

1.2 The Customer acknowledges that all Intellectual Property Rights in the Third Party Software belongs and shall continue to belong to the Third Party Software Supplier, and the Customer shall have no rights in or to the Third Party Software other than the right to use it in accordance with the terms of this Agreement and any applicable Licence Agreement.

1.3 The Customer acknowledges and accepts that the Microsoft Products are provided by Microsoft, and that any representations or warranties regarding the use of the Microsoft Products is set out in the Licence Agreement. TSG has no responsibility for the suitability, availability, functionality or otherwise regarding Microsoft Products or any other products subject to a Licence Agreement.

2. **TSG's responsibilities**

2.1 TSG shall use reasonable endeavours to procure the Third Party Software, and provide the Maintenance and Upgrade Services to the Customer, in line with Good Industry Practice.

2.2 TSG shall use reasonable endeavours to meet any performance dates agreed with a Customer, but any such dates shall be estimates only and time for performance by TSG shall not be of the essence of this Agreement.

3. **Customer's obligations**

3.1 The Customer shall:

3.1.1 co-operate with TSG in all matters relating to the Third Party Software (including entering into the Licence Agreement), and the Maintenance and Upgrade Services;

3.1.2 keep full backup copies of all its data;

3.1.3 provide in a timely manner such access to the Customer's premises (if necessary) and data, and such office accommodation and other facilities, as is requested by TSG and/or the Third Party Software Supplier;

3.1.4 provide in a timely manner such information as TSG and/or the Third Party Software Supplier may request, and ensure that such information is accurate in all material respects; and

3.1.5 be responsible (at its own cost) for preparing the relevant premises and/or system for the supply of the Third Party Software, and/or Maintenance and Upgrade Services.

4. **Maintenance Releases and New Versions**

4.1 In relation to Maintenance Releases, TSG shall from time to time procure such Maintenance Releases and ensure that these are made available to the Customer from the Third Party Software Supplier either without charge as part of the Maintenance and Upgrade Services, or subject to an additional fee notified to the Customer at the time.

4.2 If the Customer fails to acquire or install or make arrangements for the installation of a Maintenance Release (which in TSG's sole and reasonable opinion is not optional for the operation of Services) within 6 (six) months of TSG notifying the Customer that such Maintenance Release is available for installation, TSG may terminate or suspend this Agreement by giving the Customer 3 (three) months' notice.

4.3 In relation to New Versions, if the Third Party Supplier releases a New Version and the Customer decides not to acquire and install such New Version, that decision shall not give rise to any right to terminate this Agreement, nor shall it result in any adverse effect on the performance of TSG's obligations under this Agreement.

4.4 However, if the Third Party Supplier has released multiple New Versions since the version being operated by the Customer and TSG notifies the Customer that such version is approaching End of Life, TSG may terminate or suspend this Agreement by giving 3 (three) months' written notice to the Customer if the Customer does not acquire and install a New Version notified to it by TSG or the Third Party Supplier within a reasonable timescale.

4.5 TSG does not warrant that a Maintenance Release or New Version will adversely affect the then existing facilities or functions of the Services.

5. **Charges and payment**

The Fee for the Third Party Software, Maintenance Release and/or New Version shall be the amount set out in the Statement of Work, or otherwise agreed in writing between the parties.

## Section E – Supply of Goods Terms

These additional definitions apply in this Section **E** (alongside the definitions in Section **A**).

## Interpretation

### 1. Basis of the sale

1.1. Each order for Goods by the Customer shall be deemed to be an offer by the Customer subject to the terms and conditions of this Agreement. Where TSG procures Goods for a Customer from a Third Party Supplier, the terms and conditions of that Third Party Supplier shall also apply to the purchase only where such terms and conditions have been provided to the Customer.

1.2. A binding contract shall not come into existence between TSG and the Customer unless and until the Statement of Work is signed.

1.3. No order for Goods which has been acknowledged by TSG may be cancelled by the Customer, except with the agreement in writing of TSG and provided that the Customer indemnifies TSG in full against all loss, costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by TSG as a result of cancellation.

1.4. Any samples, drawings, descriptive matter or advertising produced by TSG and any descriptions or illustrations contained in TSG's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of this Agreement or have any contractual force.

1.5. To the extent that the Goods are to be manufactured in accordance with the Customer's specification, the Customer shall indemnify TSG against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by TSG in connection with any claim made against TSG for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with TSG's use of the Statement of Work. This paragraph 1.2 of these Supply of Goods Terms shall survive termination of this Agreement.

1.6. TSG reserves the right to amend the Statement of Work if required by any applicable statutory or regulatory requirements.

### 2. Prices and Payment

2.1. All Fees shall be as stated in the Statement of Work and shall be payable on such terms notified to the Customer from time to time.

2.2. TSG reserves the right, by giving notice to the Customer at any time before delivery, to increase the Fee of such Goods which have not been delivered to reflect any increase in the cost to TSG which is due to market conditions or any factor beyond the control of TSG (including without limitation 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 Goods which is

requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give TSG adequate information or instructions.

2.3. TSG may, at any time prior to delivery, require that the Customer pay a deposit as set out in the Statement of Work.

## 3. DELIVERY AND ACCEPTANCE

3.1. TSG shall use its reasonable endeavours to deliver the Goods (this clause will apply to Goods, but only if TSG has agreed to deliver the Goods) on the date or dates notified to the Customer, but any such date is approximate only. If no dates are specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Goods and TSG is not in any circumstances liable for any delay in delivery, for reasons beyond its reasonable control. The Goods may be delivered by TSG in advance of the quoted delivery date.

3.2. The Customer shall be responsible for preparing its premises for delivery and installation of the Goods.

3.3. TSG shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to TSG (or its carrier, if applicable) within 3 (three) days of delivery or the proposed delivery date of the Goods and that the Goods have been handled in accordance with TSG's stipulations. Any remedy under this clause shall be limited, at the option of TSG, to the replacement or repair of any Goods which is proven to TSG's satisfaction to have been lost or damaged in transit.

3.4. If the Customer fails to take delivery of the Goods within 3 (three) Business Days of TSG notifying the Customer that the Goods is ready, then, except where such failure or delay is caused by TSG's failure to comply with its obligations under this Agreement:

3.4.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which TSG notified the Customer that the Goods were ready; and

3.4.2. TSG shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

3.5. If 10 (ten) Business Days after the day on which TSG notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of the Goods, TSG may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the Fees of the Goods.

3.6. TSG may deliver Goods by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

## 4. LIMITED WARRANTY

4.1. Unless otherwise agreed all Goods are provided to the Customer with a standard warranty that the Goods will be free from defects for 12 (twelve) months and any replacement parts provided and fitted by TSG (or their approved providers) will be free from defects for 90 days from installation. With respect to any Goods, where applicable, TSG shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer of any Goods to TSG.

4.2. Subject to clause 4.3 of this Section **E** if:

4.2.1. the Customer gives notice to TSG promptly after discovery that the Goods are faulty;

4.2.2. TSG has reasonable opportunity to inspect the Goods; and

4.2.3. the Customer returns the Goods (if requested by TSG);

TSG shall, at its option (and always in accordance with the limits of any applicable manufacturer warranty), repair or replace Goods that are found to be defective.

4.3. Notwithstanding the provisions of clause 4.2 of this Section **E** and subject to clause 10 of Section **A**, TSG shall have no further liability to the Customer if any or all of the following apply:

4.3.1. incorrect sizing of the Goods which is a result of the Customer providing incorrect sizing specifications to TSG, or their Third Party Supplier;

4.3.2. the Customer provides TAG with the incorrect specifications for the Goods;

4.3.3. the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 4.1 of this Section **E**:

4.3.4. the defect arises because the Customer failed to follow TSG's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

4.3.5. the Customer uses the Goods with other software, or software not integrated with the Services;

4.3.6. the Customer alters or repairs such Goods without the written consent of TSG;

4.3.7. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

4.3.8. the Goods are outside of the 12 (twelve) month warranty (or any replacement part is outside of the 90 day warranty period) provided under clause 4.1 of this Section **E**; or

4.3.9. the Goods differs from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

4.4. Subject to clause 10 of Section A, TSG's only liability in respect of Goods is as set out in this clause 4 of Section **E**, TSG shall have no further liability in respect of the Goods.

**5. TITLE AND RISK**

5.1. Risk in Goods shall pass to the Customer on completion of unloading the Goods at the agreed delivery location.

5.2. Title to Goods shall only pass to the Customer once TSG receives payment in full (in cash or cleared funds) for them.

5.3. Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as TSG's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify TSG immediately if it becomes subject to any of the events listed in Clause 14.2(d) of Section A; and

(e) give TSG such information relating to the Goods as TSG may require from time to time.

5.4. TSG may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses TSG, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in paragraph 6.3 of these Supply of Goods Terms, and to recover any Goods in which property has not passed to the Customer.

6. Remedies

6.1. TSG shall not in any circumstances be liable for any non-delivery of Goods (even if caused by TSG's negligence) unless the Customer notifies TSG in writing of the failure to deliver within 7 (seven) days after the scheduled delivery date.

6.2. Any liability of TSG for non-delivery of the Goods shall in all circumstances be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata contract rate against any invoice raised for such Goods.

6.3. If TSG's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer (other than by reason of force majeure), the Customer shall in all circumstances be liable to pay to TSG all reasonable costs, charges or losses sustained by it as a result, subject to TSG notifying the Customer in writing of any such claim it might have against the Customer in this respect.

7. Hardware Maintenance

7.1. TSG shall (during the warranty period referred to in clause 4 of this Section **E** above carry out preventive maintenance of the Goods, which shall be limited to:

7.1.1. routine inspection and testing of the Goods, either remotely or in person (as determined by TSG) in accordance with the manufacturer's recommendations;

7.1.2. carrying out repairs, replacing parts (which may be used and/or reconditioned), cleaning lubrication or adjustment of the Goods as determined by TSG following the manufacturer's recommendations; and

7.1.3. changes to the Goods from time to time as determined necessary by TSG or the manufacturer.

7.2. TSG shall not be responsible for (including but not limited to) any of the following in relation to the Goods:

7.2.1. the provision of new users or equipment being added to the Goods;

7.3. the Customer's failure to maintain a suitable environment for the Goods in accordance with industry standard specifications (including without limitation failure to maintain a constant power supply, air conditioning or humidity control);

7.4. neglect or misuse of the Goods or failure to operate the Goods in accordance with the instruction of TSG or the manufacturer of the Goods;

7.5. any alteration, modification or maintenance of the Goods by any party other than by TSG (or its approved providers);

7.6. transportation or relocation of the Goods except where it has been performed by or under the direction of TSG;

7.7. the Customer using defective or inappropriate supplies, software and/or peripherals with the Goods;

7.8. any accident or disaster affecting the Goods (including without limitation fire, flood, water, wind, lightning, transportation, vandalism or burglary);

7.9. any failure, inability or refusal to afford TSG proper access to the Goods; and

7.10. any electrical incident external to the Goods.