

# TRANSPARITY GENERAL TERMS AND CONDITIONS OF SOFTWARE, HARDWARE, IT SUPPORT AND CONSULTANCY

## PART A: GENERAL TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### Definitions

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

**Acceptance Period** has the meaning set out in Clause 12.2;

**Bespoke IP** has the meaning set out in Clause 11.3;

**Business Hours** means 9:00 am to 5:30 pm on a working day;

**Charges** means the charges set out in the relevant Statement of Work payable for the Goods, Software and Services;

**Consultancy Time Bank** has the meaning set out in Clause 30.5;

**Consulting Services** means consultants provided by Us to You on a chargeable day rate to complete agreed work either on a time and materials or a fixed price basis;

**Contract** has the meaning set out in Clause 2.1;

**Customer Cause** has the meaning set out in Clause 6.3;

**Customer Faults** has the meaning set out in Clause 12.4;

**Customer IPR** has the meaning set out in Clause 11.2;

**Customer Responsibilities** means the duties, obligations and actions, set out in the Statement of Work, required of You to enable Us to provide the Goods, Software and Services effectively and in accordance with the Contract;

**Data Protection Legislation** means the EU General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR) and Directive 2002/58/EC, in each case as supplemented or modified by, or transposed into, domestic legislation of each Member State of the European Economic Area (EEA), UK Data Protection Legislation, or, to the extent applicable, the data protection or privacy laws of any other country;

**Data Services** means the data services to be provided by Us to You as specified in the Statement of Work;

**Data Service Deliverables** means any individual reports created by Us for You as part of the Data Services;

**Developed Software** means the software to be developed by Us as part of the Software Development Services as specified in the Statement of Work;

**Developed Software Documentation** means documentation relating to the use of the Developed Software as specified in the Statement of Work;

**Developed Software Support Services** means support services provided by Us to You in respect of the Developed Software;

**Development Services** means expert consultants provided by Us to You on a chargeable day rate to complete agreed development work (other than the Software Development Services) on a time and materials basis only;

**EU SCCs** mean Standard Contractual Clauses for the transfer of Personal Data to third countries pursuant to the GDPR approved by the Commission Implementing Decision (EU) 2021/914 of 4 June 2021 and incorporated by reference into this Contract; as amended or replaced from time to time by a competent authority under the relevant Data Protection Legislation;

**EU Restricted Transfer** means a transfer of Personal Data (or any onward transfer), where such transfer would be prohibited by the GDPR in the absence of the protection for the transferred Personal Data provided by the EU SCCs;

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

**Goods, Software and Services** means all products, licenses, services, data, programmes, hardware, knowhow, training, guidance and support provided by Us and a reference to **Goods, Software or Services** will be interpreted accordingly;

**Index** means the Consumer Price Index as published from time to time by the UK Office of National Statistics or where such index ceases publication such other equivalent and comparable index as We reasonably specify;

**Indexation** means an increase or decrease (as the context requires) to the applicable prices by reference to the Index;

**Infringement Claim** has the meaning set out in Clause 11.10;

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

**Losses** means all losses, liabilities, damages, costs, charges, and expenses;

**Microsoft Cloud Agreements** means the contractual arrangements between You and Us that govern the purchase and management of Microsoft Cloud Services and Microsoft Cloud Licenses. This includes, but is not limited to, the Microsoft Cloud Solution Provider (CSP) Agreement and any Microsoft Cloud NCE Agreement;

**Microsoft Cloud Licenses** means the Microsoft licenses provided by Us or Microsoft that enable access to and use of the Microsoft Cloud Services;

**Microsoft Cloud NCE Agreement** means the agreement between You and Us that sets out the terms under which Microsoft Cloud Licenses are purchased and managed under Microsoft's New Commerce Experience (NCE) framework;

**Microsoft Cloud Services** means the Microsoft services invoiced by Us to You, which are sourced from Microsoft under Our Microsoft Cloud Agreement. These services include Microsoft 365, Azure and other cloud-based offerings;

**Microsoft Cloud Solution Provider (CSP) Agreement** means the agreement between You and Us under which Microsoft Cloud Services and Microsoft Cloud Licenses are purchased, provisioned, and managed;

**Microsoft Terms** has the meaning set out in 29.2;

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

**Personal Data** has the meaning given to it in Data Protection Legislation;

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

**Relevant Information** has the meaning set out in Clause 3.2;

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

**Service Description** means specific quantitative and qualitative performance standards and commitments for the Goods, Software and Services, as may be updated from time to time;

**Service Specific Terms** has the meaning set out in Clause 2.3;

**Software Deliverables** means the Software Development Services, Developed Software and Data Service Deliverables;

**Software Development Services** means custom software development and integration services provided by Us to You on a chargeable day rate to complete agreed software development work;

**Solicited Employee** has the meaning set out in Clause 19.2;

**Statement of Work** means a detailed description of the specific Goods, Software and Services to be supplied by Us to You;

**Support and Managed Services** means the supporting services provided by Us to manage, support and maintain the technologies agreed between You and Us;

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

**Third Party IPR** means all intellectual property rights owned by or licensed to a third party including intellectual property rights in open source software and intellectual property rights of Related Service Providers;

**Transparency IPR** has the meaning set out in Clause 11.1;

**Transparency Materials** means any information, documentation or other materials provided by Us to You in connection with the provision of the Goods, Software and Services (but excluding any Developed Software Documentation);

**UK Addendum** means the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses issued by the UK Information Commissioner under section 119A(1) Data Protection Act 2018;

**UK Data Protection Legislation** means the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (UK GDPR), together with the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) and other data protection or privacy legislation in force from time to time in the United Kingdom;

**UK Restricted Transfer** means a transfer of Personal Data (or any onward transfer), where such transfer would be prohibited by the UK GDPR in the absence of the protection for the transferred Personal Data provided by the UK Addendum;

**We and Us** means Transparency Solutions Limited (trading as Transparency), registered office: 2 Kingdom Street, Paddington, London, England, W2 6BD. Registered in England No. 09420434 and reference to **Our** will be construed accordingly; and

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

#### Interpretation

- 1.2 In the Contract (unless the context requires otherwise):
- 1.2.1 the words **including, include, for example, in particular** and words of similar effect will be construed so that they do not limit the general effect of the words which precede them;
- 1.2.2 references to the Contract include the Schedules and any annex or appendix to a Schedule, and any Statement of Work entered into pursuant to this Contract (unless expressly stated otherwise or the context otherwise requires);
- 1.2.3 words importing the singular will include the plural and vice versa;
- 1.2.4 any rule of interpretation that is contrary to common sense does not apply to the Contract;
- 1.2.5 references to a **Clause** are references to the clauses of these Terms and Conditions;
- 1.2.6 Clause headings are merely a guide and are not intended to be a part of the Contract;
- 1.2.7 references to any one gender do not exclude other genders and general references to a **person** will be understood to include (as applicable), a natural person, a company, a partnership, and an unincorporated association (in each case whether or not having separate legal personality); and
- 1.2.8 working days are all days other than Saturdays, Sundays and public holidays in England.

### 2. YOUR CONTRACT

#### General

- 2.1 The relationship between You and Us, including the Goods, Software and Services We agree to supply to You from time to time will be governed wholly by the following (the **Contract**) (and in the following order of precedence, highest to lowest):

- 2.1.1 the Statement of Work;

2.1.2 all applicable Service Specific Terms, including any separate specific Service Description and the Microsoft Cloud Agreements, and all documents specifically referred to in any of them; and

2.1.3 these Terms and Conditions and all other documents specifically referred to in these Terms and Conditions,

save that where the conflict or inconsistency relates to termination rights under this Contract then Clause 17 in these Terms and Conditions will take precedence over any other terms to the contrary.

2.2 These Terms and Conditions apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. We reserve the right to update these Terms and Conditions from time to time. Any such updates will be effective upon publication on Our website, unless stated otherwise.

**Service Specific Terms**

2.3 The Goods, Software and Services We agree to supply to You may be subject to service specific terms and conditions from time to time relating to Your access and/or use of the applicable Goods, Software and Services (**Service Specific Terms**) due to the nature of the Goods, Software and Services or because We provide the Goods, Software as Services as a reseller for a Related Service Provider.

2.4 Service Specific Terms applicable to the Goods, Software and Services are set out or referred to in '**Part B: Service Specific Terms**' to these Terms and Conditions. We will provide You with details of any updates to the Service Specific Terms.

**Related Service Providers**

2.5 You acknowledge that certain Goods, Software and Services may be provided by Related Service Providers as part of a multi-supplier environment where We act as a reseller of Goods, Software and Services. Accordingly, You will co-operate with and assist each such Related Service Providers.

**Marketing materials and proposals**

2.6 We will ensure that all marketing materials and proposals provided by Us to You are prepared in good faith.

2.7 Any marketing materials and proposals (including all associated documentation, estimates, quotations, correspondence and information) provided by Us to You are for information purposes only.

2.8 Any information contained in marketing materials or proposals, including any description of the Goods, Software and Services, the price of the Goods, Software and Services and how We intend to provide the Goods, Software and Services, that is intended to form part of the Contract or the Statement of Work will be expressly set out in, or expressly referred to, in these Terms and Conditions or the Service Specific Terms for the relevant Goods, Software or Services.

**Changes**

2.9 We, and Our Related Service Providers may change the terms (including the specification) of the Goods, Software and Services from time to time. If such change has a material adverse effect on the functionality, performance or quality of the Goods, Software or Services, then if We are permitted by the Related Service Provider, We will allow You to terminate the affected Goods, Software and Services.

2.10 If You request Us to change the terms (including the specification) of the Goods, Software or Services after the Contract has been signed, We may consider doing so at Our discretion, and we will notify You if any such alteration may be subject to an increase of the price.

**3. YOUR ORDERS**

**General**

3.1 You will ensure that the terms of Your Statement of Work are complete and accurate.

**Relevant Information**

3.2 You confirm at the time of placing a Statement of Work that You have given Us all necessary and relevant information that You hold and any further information that You suspect may make the supply of Goods, Software or Services under Your Statement of Work significantly more difficult to make or carry out (**Relevant Information**).

3.3 You will promptly give Us any Relevant Information that You become aware of after placing Your Statement of Work that You have not at the relevant time given to Us in accordance with Clause 3.2.

**Resource cancellation and rescheduling**

3.4 If You schedule resources from Us, either through placing a new Statement of Work or calling off from an existing pre-paid arrangement, and these are rescheduled by You on ten (10) working days' notice or less prior to the date such resources were scheduled, We will endeavour to reallocate the resource to other projects but, in the event we are unable to do so, We reserve the right to charge the following cancellation charges based upon the amount of notice given prior to the date such resources were scheduled:

Notice (working days) *	Cancellation charges
1 - 5	100% of the total Charges
6 - 10	50% of the total Charges

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

3.5 If We are required to cancel or reschedule any allocated resource due to Your failure to fulfil any Customer Responsibilities, we reserve the right to charge you the cancellation charges. The applicable cancellation charges shall be determined in accordance with Clause 3.4, based on the point in time at which we first become aware that Your non-fulfilment will impact the scheduled resource.

**4. OUR OBLIGATIONS**

**General**

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

4.1.1 all applicable laws; and

4.1.2 Good Industry Practice.

**5. TIME FOR PERFORMANCE**

**General**

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

**6. YOUR OBLIGATIONS**

**General**

6.1 You will:

6.1.1 co-operate with Us in all matters relating to the Contract and provide Us and Our Personnel with such information, access and materials as Us or Our Personnel may reasonably require in order to supply the Goods, Software and Services;

6.1.2 prepare the Relevant Premises for the supply of the Goods, Software and Services as specified by Us in any documents forming the Contract;

6.1.3 complete all Customer Responsibilities as specified in the Statement of Work;

6.1.4 back up all of Your data;

6.1.5 other than the licenses We agree to supply to You under the Contract, obtain and maintain all other licenses, permissions and consents which may be required for You to receive and use the Goods, Software and Services;

6.1.6 comply with all applicable laws in connection with the Contract and the performance of Your obligations under the Contract; and

6.1.7 keep all materials, equipment, documents and other property of Us or Our Personnel that are provided to You or at any Relevant Premises in good condition and in safe custody at Your own risk. Additionally, You will not dispose of, or use, the same other than in accordance with Our written instructions or authorisation.

6.2 Where We supply any Goods, Software or Services for You at Relevant Premises, You agree to indemnify Us and keep Us indemnified against any Loss arising out of the physical injury or death of any of Our Personnel arising in

any way from provision of defective equipment by You, Your failure to provide a safe system of work or otherwise by reason of any negligent act or default by You or Your Personnel.

**Customer Cause**

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

6.3.1 We will have the right to suspend the supply of Goods, Software and Services that are affected by the Customer Cause until You remedy the Customer Cause to Our reasonable satisfaction. We may terminate the affected Goods, Software or Services if You fail to remedy the Customer Cause within a period that is acceptable to Us acting reasonably;

6.3.2 We may rely on the Customer Cause to relieve Us from any non-performance or delay in performance of Our obligations to the extent those obligations are affected by the Customer Cause. Accordingly, We will not be liable for any Losses sustained or incurred by You as a result of any non-performance or delay in performance of any of Our obligations affected by a Customer Cause; and

6.3.3 You will reimburse Us for any Losses sustained or incurred by Us arising from the Customer Cause.

6.4 Your obligations under Clause 6.3 will remain in effect and enforceable after the Contract has terminated.

**7. SUB-CONTRACTING**

**General**

7.1 Save as permitted by Clauses 2.5 and 7.2, You and Us will not delegate the performance of the respective obligations of You and Us to a third party without the prior written consent of the other (not to be unreasonably withheld or delayed).

7.2 You consent to Us delegating the supply of the Goods, Software and Services We have agreed to supply to You under the Contract and You consent to Us from time to time using consultants that are not full-time staff of Us and Related Service Providers to deliver part or all of the Goods, Software and Services to You.

7.3 We will be responsible for all acts and omissions of Our sub-contractors and the acts and omissions of those employed or engaged by Our sub-contractors as if such acts and omissions were Our own.

**8. THIRD PARTY RECOMMENDATIONS**

**General**

We may from time to time as part of performing Our obligations under the Contract recommend or suggest that another person or company carries out work outside of the Contract. You acknowledge that the success of the work will depend upon You and the third party and that such risks, skills and conditions are not in any way guaranteed or underwritten by Us. Accordingly, You will need to carry out Your own investigations to ensure that any person recommended by Us satisfies Your requirements. You are free to instruct any other person that You may decide is suitable to complete the work.

**9. OUR LIABILITY**

**Excluded liability**

9.1 Subject to Clause 9.3, We do not accept liability for:

9.1.1 indirect or consequential Loss of any kind;

9.1.2 any Loss of any kind relating to the loss of data in any format however it is stored (whether direct or indirect). Accordingly, You assume all responsibility for the correct storage of data and for ensuring that the data is sufficiently protected and backed up. We are not liable for any failure of data backups, storage devices or cloud storage services;

9.1.3 any Loss or incompatibility of third party software (whether direct or indirect). All third party software will be installed at Your sole discretion and risk; and

- 9.1.4 for any Loss arising from hardware faults or hardware related issues (whether direct or indirect).
- Our liability cap**
- 9.2 Subject to Clauses 9.1 and 9.3, Our total aggregate liability for all Losses incurred or suffered by You arising under or in connection with the Contract will be limited to one hundred per cent (100%) of all amounts paid by You under the Contract in the previous twelve (12) months or, where an event giving rise to Loss occurs prior to You having paid any amounts to Us, a sum equivalent to amounts invoiced or payable for the then current month.
- Unlimited liability**
- 9.3 Nothing in the Contract limits or excludes a party's liability:
- 9.3.1 to the extent that it cannot be legally limited or excluded by applicable law;
- 9.3.2 for death or personal injury arising out of its negligence or that of its Personnel; and
- 9.3.3 for Losses suffered by the other party arising out of the first party's (or its Personnel's) fraud or fraudulent statement.
- 10. CHARGES AND PAYMENT**
- Charges**
- 10.1 The Charges for the Goods, Software and Services are set out in the relevant Statement of Work and are exclusive of VAT and other applicable taxes or duties unless specifically stated. You will be liable to pay all applicable VAT and taxes incurred in relation to the Goods, Software and Services supplied under the Contract.
- 10.2 The Charges exclude any expenses reasonably incurred by Us in connection with the Contract.
- 10.3 Where any Services are being funded (in part or full) on Your behalf by Microsoft, You are required to complete (i) the Microsoft proof of execution documents; and (ii) any required steps notified to You in order for Us to be paid by Microsoft for these Consulting Services. In any event, should We not be paid for these services by Microsoft, You will be liable to pay for the days delivered, priced at Our rate card at the time.
- Payment**
- 10.4 You must pay Us the Charges specified in the Statement of Work within thirty (30) days of the date of receipt of an invoice. Payment will be made by electronic bank transfer to the bank account details specified on the invoice.
- Late payment**
- 10.5 If You fail to make a payment due to Us under the Contract for Goods, Software and Services within thirty (30) days of the applicable due date for payment, without limiting Our other remedies under the Contract, We have the right to suspend the supply of the affected Goods, Software and Services.
- Set-off and withholding**
- 10.6 All amounts due under the Contract must be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by applicable law).
- 10.7 If You are required to make any deduction or withholding by applicable law then the amount payable shall be increased by such amount as is necessary to make the actual amount received (after such deduction or withholding) equal to the amount that would have been received by Us had no deduction or withholding been required.
- VAT**
- 10.8 All payments under this Contract exclude amounts in respect of VAT which, if applicable, will be paid in addition at the relevant rate from time to time.
- 10.9 Where We have undercharged You the VAT that should have been due on a Statement of Work, You will be liable to pay Us the outstanding VAT immediately.
- 10.10 Where We have overcharged You VAT, We shall refund You the amount that You have overpaid within a reasonable period of time from when We are made aware of the overpayment.
- Related Service Provider price**
- 10.11 You acknowledge that the price may be subject to change if a Related Service Provider increases the price of its goods, software or services that are used to provide the
- Goods, Software and Services under or in connection with the Contract.
- Indexation**
- 10.12 You acknowledge that the price may be subject to change by Us in March of each year to reflect Indexation. Such Indexation shall apply by reference to the Index as at 28 February (that is to say by reference to the percentage increase (if any) in the Index over the preceding twelve (12) months) in each year.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- Ownership**
- 11.1 All intellectual property rights owned by or licensed to Us which:
- 11.1.1 existed before entering into the Contract; and
- 11.1.2 which have come into existence, other than in connection with the Goods, Software and Services, after entering into the Contract,
- will remain vested in (or, as the context requires, will be owned by) Us or Our licensors (as applicable) (**Transparency IPR**).
- 11.2 All intellectual property rights owned by or licensed to You which:
- 11.2.1 existed before entering into the Contract; and
- 11.2.2 which have come into existence, other than in connection with the Goods, Software and Services, after entering into the Contract,
- will remain vested in (or, as the context requires, will be owned by) You or Your licensors (as applicable) (**Customer IPR**).
- Bespoke IP**
- 11.3 All intellectual property rights in the Developed Software, Developed Software Documentation and Data Service Deliverables which are specifically created by Us for You as specified in the Statement of Work (but excluding all Transparency IPR, Third Party IPR and any intellectual property rights in the Transparency Materials) (**Bespoke IP**) will vest in Us upon creation. Upon confirmation that payment in full has been made by You to Us of all sums which are owed, and subject at all times to Clause 11.4, We will, if requested by You, assign to You the Bespoke IP.
- 11.4 You agree that in no circumstances will We be prevented from using any know-how, methods, code, techniques or procedures owned or developed by Us in the course of providing the Software Development Services, Developed Software, Data Services and/or Data Service Deliverables for any purpose.
- 11.5 Save as set out in Clause 11.3, all intellectual property rights in or arising out of or in connection with the Goods, Software and Services (other than Customer IPR) (**New IPR**) will be owned by Us or Our licensors.
- 11.6 Save as set out in Clause 11.3, should any New IPR vest in You as a result of the Contract, You agree to assign to Us with full title guarantee (including by way of present assignment of future intellectual property rights) all New IPR. You shall, at Our request, execute (and procure that third parties execute) all documents requested by Us so as to confirm Our title in such New IPR.
- 11.7 If reasonably requested by You, We shall provide a copy of the source code for the Developed Software following the acceptance of the Developed Software provided You have paid in full all sums which You owe Us.
- License**
- 11.8 Subject to any specific restrictions or other applicable terms in the Service Specific Terms, We will grant to You or will procure the direct grant to You of, a fully paid-up, worldwide, non-exclusive, royalty-free license during the term of the Contract to copy the deliverables (excluding materials provided by You) for the purpose of receiving and using the Goods, Software and Services and the deliverables in Your business. You will not sub-license, assign or otherwise transfer the rights granted in this Clause 11.8.
- 11.9 You will grant Us a fully paid-up, non-exclusive, royalty-free, non-transferable license to copy and modify any materials provided by You for the term of the Contract solely for the purpose of providing the Goods, Software and Services to You.
- IP Infringement**
- 11.10 Subject at all times to Clause 11.12, if a claim or demand for infringement or alleged infringement of any intellectual property right is made in respect of the Software Development Services or Developed Software (or, in Our reasonable opinion, is likely to be made) (**Infringement Claim**) or if We fail to comply with Our obligations in Clause 11.13 (**Notification Failure**), We shall, at Our own expense and option, either:
- 11.10.1 modify or replace the Software Development Services and/or Developed Software so that they:
- (i) in the event of an Infringement Claim, cease to be infringing; or
- (ii) in the event of a Notification Failure, no longer require the use of the Third Party IPR;
- 11.10.2 procure the right for You to continue using, as contemplated by the Statement of Work:
- (i) in the event of an Infringement Claim, the Software Development Services and Developed Software; or
- (ii) in the event of a Notification Failure, the Third Party IPR; or
- 11.10.3 if neither of the foregoing options is practicable, require You to return the affected Software Development Services and/or Developed Software to Us and We shall reimburse You for the amounts paid for such Software Development Services and/or Developed Software.
- 11.11 Subject to Clause 9.3, the remedies in Clause 11.10 represent Your exclusive remedies in respect of an Infringement Claim and/or a Notification Failure.
- 11.12 Subject to Clause 9.3, We shall have no liability for any Infringement Claim, where the cause of the infringement arises out of:
- 11.12.1 any materials or instructions provided to Us by You or on Your behalf;
- 11.12.2 modification, enhancement or alteration of Software Development Services and/or Developed Software by You or on Your behalf;
- 11.12.3 combination of the Software Development Services and/or Developed Software with other software or hardware not approved by Us; or
- 11.12.4 You using the Software Development Services and/or Developed Software in breach of the provisions of this Contract.
- 11.13 Licences and services provided by third parties that are required by You to enable You to use the Developed Software shall be identified by Us in the Statement of Work.
- 11.14 You shall be responsible for arranging Your access to and use of such Third Party IPR. Accordingly, We shall not be liable for any delay or failure by You to procure access to and use of such Third Party IPR.
- 12. ACCEPTANCE**
- 12.1 If the Statement of Work specifies that the Software Deliverables will be subject to acceptance testing then Clauses 12.2 to 12.8 will apply.
- 12.2 You will complete the acceptance tests within the timeframe specified in the Statement of Work. If no specific timeframe is stated, the acceptance testing period will default to fourteen (14) days from notification from Us that the Software Deliverable is ready for testing (**Acceptance Period**).
- 12.3 During the Acceptance Period You will record and promptly notify Us in detail of any non-conformities with the Software Deliverable (**Defect Notice**). We will review and classify those non-conformities as either faults, new requirements or acceptable faults.
- 12.4 Upon receipt of a Defect Notice, other than in respect of acceptable faults, We will use all reasonable endeavours to alter the Software Deliverable to address any material issues identified during the Acceptance Period. For new requirements, We may consider carrying out such additional work at Our discretion, and any such work may be subject to an increase of the Charges. For the avoidance of doubt and subject to Clause 9.3, We will not be liable (and are not obliged to correct) any faults that arise as a result of:
- 12.4.1 You not following Our recommendations or instructions;

- 12.4.2 You combining the Software Deliverables with other software or hardware not approved by Us;
- 12.4.3 any materials or instructions provided to Us by You or on Your behalf; or
- 12.4.4 You using the Software Deliverables in breach of the Contract,

**(Customer Faults).**

- 12.5 Subject to Clause 9.3, the remedy in Clause 12.4 represents Your sole and exclusive remedy in respect of any failure of a Software Deliverable provided that the Software Deliverable operates in all material respects in accordance with any written description or documentation expressly provided by Us prior to delivery.
- 12.6 Acceptance of the Software Deliverables by You shall be deemed to occur as follows:
  - 12.6.1 if We do not receive a Defect Notice pursuant to Clause 12.3, upon the earlier of (i) notification by You of Your acceptance; (ii) the expiry of the fourteen day period set out in Clause 12.2; or (iii) the circumstances in Clause 12.6.3 applying; or
  - 12.6.2 if We do receive a Defect Notice pursuant to Clause 12.3, on the earlier of (i) correction of the non-conformity; or (ii) the circumstances in Clause 12.6.3 applying; and
  - 12.6.3 if any of the Software Deliverables are used by You in production, upon such use of the Software Deliverables.
- 12.7 Your acceptance of the Software Deliverables in accordance with this Clause 12 will be conclusive evidence that You have examined the Software Deliverable and found it to be in accordance with any written description or documentation in all material respects.
- 12.8 In this Clause 12, **fault** means a material non-compliance of the Developed Software with the specification set out in the Statement of Work, and **acceptable fault** means any non-compliance that is not a material non-compliance of the Developed Software with the specification set out in the Statement of Work.

**13. ASSIGNMENT**

**General**

- 13.1 Save as specifically permitted in Clause 13.2 or elsewhere in the Contract, neither You or Us may assign the benefit of any part of the Contract without the written consent of the other.
- 13.2 We may assign the benefit of any judgement debt owed to Us by You to any third party at any time.

**14. DATA PROTECTION AND DATA PROCESSING**

**General**

- 14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 14.2 You and Us acknowledge that for the purposes of the Data Protection Legislation, You are the Controller and We are the Processor (where Controller and Processor have the meanings as defined in the Data Protection Legislation).
- 14.3 You will ensure that You have all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to Us for the duration and purposes of the Contract.
- 14.4 We shall, in relation to any Personal Data processed in connection with the performance by Us of Our obligations under the Contract:
  - 14.4.1 process that Personal Data only on the written instructions of You unless We are required by any applicable laws to which we are subject, in which case, We shall promptly notify You of this before performing the processing required by the relevant applicable laws unless those applicable laws prohibit Us from so notifying You;
  - 14.4.2 ensure that We have in place appropriate technical and organisational measures, reviewed and approved by You, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of

technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of Our systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by Us);

- 14.4.3 ensure that all Personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- 14.4.4 notify You without undue delay on becoming aware of a Personal Data Breach (as defined by the Data Protection Legislation);
- 14.4.5 notify You of any communication from a Data Subject regarding the processing of Personal Data, or any communication from a supervisory authority relating to any obligation under the Data Protection Legislation in respect of the Personal Data and, taking into account the nature of the processing and information available to Us, reasonably assist You by applying appropriate technical and organisational measures, insofar as this is possible, to assist in fulfilling Your obligation to respond to requests for exercising the Data Subject's rights;
- 14.4.6 assist You with Your obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and information available to Us;
- 14.4.7 make available to You on request all information necessary to demonstrate Our compliance with this Clause 14 and with Article 28 of the GDPR, and You may, at Your expense and not more than once per year, perform an audit in relation to these same provisions with written notice reasonably, but at least fifteen (15) working days, in advance, such audit to take place over not more than one day during Our normal Business Hours on a mutually agreed schedule that will minimise the audit's impact on Our operations;
- 14.4.8 at Your written direction, delete or return Personal Data and copies thereof to You on termination of the Contract unless required by applicable Data Protection Legislation to store the Personal Data.
- 14.5 You hereby provide Us with general authorisation to appoint third party processors of Personal Data under the Contract. We confirm that We have entered, or (as the case may be) will enter with any third party processors, into a written agreement incorporating terms which are substantially similar to those set out in this Clause. We shall inform You of any intended changes concerning the addition or replacement of Our third party processors by way of notice, with such change to be effective 10 (ten) working days following the delivery of this notice, unless You raise an objection to the proposed change during that notice period. As between You and Us, We shall remain fully liable for all acts or omissions of any third party processor appointed by Us pursuant to this Clause 14.
- 14.6 Subject to Clause 14.5, We shall not transfer any Personal Data to locations outside of the United Kingdom and the European Economic Area until the following conditions are fulfilled:
  - (i) You or We have provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - (iii) We comply with Our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) We comply with reasonable instructions notified to Us in advance by You with respect to the processing of the Personal Data.
- 14.7 Subject to Clauses 14.5 and 14.6, in respect of any of any third party processors appointed by Us, insofar as that engagement involves:
  - (i) a UK Restricted Transfer, We shall ensure the relevant provisions of the UK Addendum are at all relevant times entered into between Us (as Your

Processor) and each third party processor to ensure the adequate protection of the transferred Personal Data; or

- (ii) an EU Restricted Transfer, We shall ensure the relevant Module of the EU SCCs are at all relevant times entered into between Us (as Your Processor) and each third party processor to ensure the adequate protection of the transferred Personal Data.

14.8 For the purposes of Article 28(3) of the GDPR, the processing of Personal Data to be carried out by Us on Your behalf in connection with this Contract shall be as follows:

- 14.8.1 **Subject matter and duration of processing:** For the delivery of the Goods, Software and Services as set out in the Statement of Work;
- 14.8.2 **Nature and purpose of processing:** As necessary for the delivery of the Goods, Software and Services as set out in the Statement of Work;
- 14.8.3 **Type of Personal Data:** Names, contact details and such other data as is provided by You or on Your behalf in the context of your receipt of the Goods, Software and Services;
- 14.8.4 **Categories of Data Subject:** Your employees, contractors and other nominated end users of the Goods, Software and Services.

14.9 As explained in Clause 2.5, certain Goods, Software and Services may be provided by Related Service Providers. You acknowledge that any processing of Personal Data carried out by Related Service Providers will be as agreed between You and that Related Service Provider, and We will have no role (or control) in relation to such processing unless instructed by You in which case We will consult with You and act in accordance with Your written instructions as per Clause 14.4.1.

**15. NOTICES**

**General**

- 15.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business or sent by email to the address specified in the Statement of Work.
- 15.2 Any notice shall be deemed to have been received:
  - 15.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 15.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the second working day after posting or at the time recorded by the delivery service; and
  - 15.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume (provided that no email delivery failure notification is received).

**16. CONFIDENTIALITY AND PUBLICITY**

**General**

- 16.1 Each party undertakes that it shall not at any time during the Contract, and thereafter, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 16.2.
- 16.2 Each party may disclose the other party's confidential information:
  - 16.2.1 to its employees, officers, representatives, sub-contractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this Clause 16; and
  - 16.2.2 as may be required by applicable law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 16.4 You agree that We may from time to time:

16.4.1 refer to You as a customer of Us and to the types of Goods, Software and Services supplied to You in Our marketing material which may include a case study describing the Goods, Software and Services supplied by Us to You; and

16.4.2 use Your, logos, trade marks and trade names for the purpose of referring to You as Our customer in Our marketing materials.

## 17. TERM AND TERMINATION

### Term

17.1 The Contract will continue in force unless and until terminated in accordance with this Clause 17.

### Our termination rights

17.2 The Contract may be terminated by Us in the following circumstances:

17.2.1 should any sums due to Us under the Contract remain unpaid for a period of sixty (60) days or more;

17.2.2 in the event that You fail to provide any of Our Personnel working at Relevant Premises with a safe system of work or if You request that any of Our Personnel works in conditions or with equipment which are in any way unsafe or hazardous;

17.2.3 where You fail to carry out any agreed prerequisite work at the Relevant Premises by the specified deadline to enable Us to implement and/or install any Goods, Software and Services, and You fail to provide Us with at least fourteen (14) days' notice of the delays;

17.2.4 You become subject to an Insolvency Event;

17.2.5 You, or any person acting on Your behalf, engages in abusive, threatening, discriminatory, or otherwise inappropriate behaviour towards Our Personnel;

17.2.6 You commit a material breach in respect of any of Your obligations relating to the applicable Goods, Software and Services that is incapable of remedy; or

17.2.7 You commit a material breach in respect of any of Your obligations relating to the applicable Goods, Software and Services that is capable of remedy and You fail to remedy or procure the remedy of the breach within thirty (30) days of Your request for Us to do so, and

17.2.8 in accordance with Clause 6.3.1.

### Your termination of the Contract

17.3 You may terminate the Contract at any time if all Your Goods, Software and Services (including any Microsoft Cloud Licenses) have expired or have been terminated in accordance with the Contract and We do not supply any Goods, Software or Services to You under the Contract at the relevant time. For clarity, the Microsoft Terms set out how any Microsoft Cloud Licenses and Microsoft Cloud Services can expire or be terminated.

### Your termination of Goods, Software and Services

17.4 With the exception of any Microsoft Cloud Licenses purchased under the Microsoft Cloud Agreement which will continue unless and until terminated in accordance with the Microsoft Cloud Agreement or Microsoft Terms, You may terminate individual Goods, Software and Services or any affected element or part as set out in these Terms and Conditions or the Service Specific Terms for the applicable Goods, Software or Services.

17.5 With the exception of any Microsoft Cloud Licenses purchased under the Microsoft Cloud Agreement which will continue unless and until terminated in accordance with the Microsoft Cloud Agreement and Microsoft Terms, You may terminate any individual Goods, Software and Services or any affected element or part, if an act or omission by or on behalf of Us means that:

17.5.1 We commit a material breach in respect of any of Our obligations relating to the applicable Goods, Software and Services that is incapable of remedy; or

17.5.2 We commit a material breach in respect of any of Our obligations relating to the applicable Goods, Software and Services that is capable of remedy and We fail to remedy or procure the remedy of the breach within thirty (30) days of Your request for Us to do so,

provided that the matter has first been referred to the resolution procedure referred to in Clause 28 and You have not found the outcome satisfactory.

### General

17.6 In any of the circumstances in Clause 17.2 in which We may terminate the Contract, We may instead terminate any element or part of the Goods, Software and Services.

17.7 Where We terminate all or part of Contract pursuant to Clause 17.2 as a result of Your acts or omissions, We will no longer be under any obligation to do any work for You in relation to the terminated parts of the Contract, and You will immediately become liable to pay Us (i) all undisputed unpaid invoices which You owe Us for the terminated Goods, Software and Services; and (ii) any outstanding Charges specified in the Statement of Work or otherwise agreed between You and Us from time to time for the Goods, Software and Services You have agreed to purchase from Us but for which we will no longer be providing due to Our termination of the Contract in accordance with Clause 17.2. The parties confirm that these sums are reasonable and proportionate to protect Our legitimate interest in performance of the Contract.

## 18. FORCE MAJEURE

Other than Your obligation to make payment, neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## 19. NON SOLICITATION

19.1 Neither party shall, and shall procure that its Personnel shall not, during the term of the Contract and for twelve (12) months following the termination or expiry of the Contract either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the other party's employment any of the other party's employees who at the time of such solicitation or enticement is or was engaged by that other party under or in connection with the Contract in the twelve (12) months immediately preceding such solicitation or enticement.

19.2 If a party (**Breaching Party**) employs a person in breach of Clause 19.1 (**Solicited Employee**), then without prejudice to any of the other party's other rights or remedies, the Breaching Party shall on demand pay to the other party an amount equivalent to thirty per cent (30%) of the gross annual salary or annual contract fees of the Solicited Employee, being such salary or fees in place immediately prior to such solicitation or enticement.

## 20. ENTIRE AGREEMENT

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

20.2 You and Us acknowledge that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

20.3 Nothing in this Clause 20 shall limit or exclude any liability for fraud.

## 21. THIRD PARTY RIGHTS

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

## 22. GOVERNING LAW

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

## 23. JURISDICTION

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

## 24. VARIATION

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

## 25. WAIVER

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

## 26. SEVERANCE

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

## 27. NO PARTNERSHIP OR AGENCY

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

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

## 28. DISPUTES

28.1 Any dispute which may arise between the parties concerning the Contract shall be determined as provided in this Clause 28.

28.2 For the purpose of this Clause 28, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.

28.3 Unless the Contract has already been terminated by the date of the notice of dispute, We shall, in every case, continue with the supply of the Goods, Software and Services regardless of the nature of the dispute and You shall continue to make payments (excluding any disputed sums) in accordance with the Contract.

28.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this Clause 28.4 shall be extendable by mutual agreement):

28.4.1 within two (2) days, Our project manager and Your representative shall meet to attempt to settle the dispute;

28.4.2 if Our project manager and Your representative are unable to reach a settlement within seven (7) days from the date of service of the notice, the managing directors of each of the parties shall meet within the following seven (7) days to attempt to settle the dispute; and

28.4.3 if no settlement results from the meeting specified in Clause 28.4.2, for the following twenty eight (28) days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.

28.5 If no settlement is reached under Clause 28.4:

28.5.1 if the dispute is of a technical nature concerning the interpretation of the business requirements specification or technical specification or any similar or related matter then such dispute shall be referred for arbitration. The arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his or her fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees;

28.5.2 in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English Courts in the

most expeditious manner possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings; and

28.5.3 in any other case, the dispute shall be determined by the English Courts and the parties submit to the exclusive jurisdiction of such court for such purposes.

## PART B: SERVICE SPECIFIC TERMS

### 29. MICROSOFT CLOUD SERVICES TERMS

#### General

- 29.1 This section sets out the Service Specific Terms that You and Us agree will apply where We agree to supply Microsoft Cloud Services and provide, or procure, the provision of Microsoft Cloud Licenses through Our Microsoft Cloud Agreement.
- 29.2 The terms of the United Kingdom, Corporate, Microsoft Customer Agreement found at [www.microsoft.com/licensing/docs/customeragreement](http://www.microsoft.com/licensing/docs/customeragreement), will apply at all times to the supply of Microsoft Cloud Services and Microsoft Cloud Licenses under the Contract by Us or Our Related Service Provider Microsoft (**Microsoft Terms**). The Microsoft Terms will form part of the Contract between You and Us relating to Microsoft Cloud Services and Microsoft Cloud Licenses.

#### Microsoft Cloud Services and Microsoft Cloud Licenses

- 29.3 A description of the Microsoft Cloud Services and Microsoft Cloud Licenses We will provide to You and how We intend to provide the Microsoft Cloud Services and Microsoft Cloud Licenses to You will be as set out in the Microsoft Terms and any applicable Service Description from time to time.
- 29.4 The price for the Microsoft Cloud Services and Microsoft Cloud Licenses will be as set out or otherwise referred to in Microsoft's published price list from time to time.

#### Additional Services

- 29.5 You will be given access to the 'Transparency Control Centre' and Our 'Service Desk Resource' where You can add and remove or instruct Us to add or remove Microsoft Cloud Services and Microsoft Cloud Licenses. You will pay for all Microsoft Cloud Services and Microsoft Cloud Licenses added by You via the 'Transparency Control Centre' and that You instruct Us to add via the 'Service Desk' resource.
- 29.6 A description for Our 'Value-Added Support and Managed Services' is available upon request.
- 29.7 You agree to provide and maintain the permissions needed to enable Us to supply the Microsoft Cloud Services, this includes administrative access to in scope services and subscriptions for Our Personnel. Details relating to the security controls implemented by Us to secure access to Your environment(s) are available on request.

#### Cancellation

- 29.8 Your cancellation rights in relation to Your Microsoft Cloud Licenses are set out in the Microsoft Terms.
- 29.9 You may cancel Your Microsoft Cloud Services (including Microsoft reserved instances that typically have a one (1) or three (3) year commitment) at any time as long as You commit to reimburse Us for any termination charges or similar that are levied against Us by Our Related Service Provider Microsoft as a result of Your cancellation and which are evidenced to Your reasonable satisfaction.
- 29.10 We will at all times permit You to cancel Your Microsoft Cloud Licenses and Microsoft Cloud Services as set out in these Service Specific Terms at Clauses 29.8 and 29.9 for as long as Our Related Service Provider Microsoft permit Us to cancel on these terms under Our Microsoft Cloud Agreement.

#### Migration

- 29.11 Where Microsoft Cloud Services are migrated by Us without additional charge (e.g. the migration is not paid for by You as Consulting Services or otherwise), We will provide the migration of the Microsoft Cloud Services on a reasonable endeavours basis.
- 29.12 Where Microsoft Cloud Services are migrated by Us without additional charge, should You terminate those Microsoft Cloud Services within a twelve (12) month period, We reserve the right to charge for the time spent in migrating the Microsoft Cloud Services based upon Our rate card at that time.

### 30. CONSULTING SERVICES

#### General

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

#### Consulting Services

- 30.2 A description of the Consulting Services We will provide to You and how We intend to provide the Consulting Services to You will be as set out in the Statement of Work.
- 30.3 Subject to Clauses 10.11, 10.12 and 30.4, the price for the Consulting Services to You outside of Business Hours, the price for such Consulting Services involve Development Services, the price for such Consulting Services will be on a time and materials basis and any timelines and costs given for such Consulting Services are to be considered estimates.
- 30.4 Any prices given for the Consulting Services are for Business Hours only. In the event we agree to provide Consulting Services to You outside of Business Hours, the price for such Consulting Services will be charged at two (2) times the rate set out in the Statement of Work.

#### Consultancy Time Bank

- 30.5 If You purchase days in advance for use later (**Consultancy Time Bank**), or You purchase a defined number of days and do not use them all, You must consume these days within twelve (12) months of their invoice date. We reserve the right to remove any remaining balance at any time on or after the expiration of such twelve (12) month period.
- 30.6 If all Consulting Services are completed or You terminate the Consulting Services as a result of any material breach by Us in respect of any of Our obligations relating to the Consulting Services, We will refund any unused days in Your Consultancy Time Bank as at the date of completion or termination upon request by You.

### 31. SOFTWARE DEVELOPMENT SERVICES AND DEVELOPED SOFTWARE SUPPORT SERVICES

#### General

- 31.1 This section sets out the Service Specific Terms that You and Us agree will apply where We agree to supply Software Development Services and, if applicable, Developed Software Support Services to You.

#### Software Development Services and Developed Software Support Services

- 31.2 A description of the Software Development Services and, if applicable, the acceptance tests relevant for the Developed Software will be as set out in the Statement of Work.
- 31.3 A description of the Developed Software Support Services We will provide to You and how We intend to provide the Developed Software Support Services to You will be as set out in a separate specific Service Description. Any separate specific Service Description provided by Us will form part of the Contract between You and Us relating to Developed Software Support Services.
- 31.4 Subject to Clauses 10.11 and 10.12 and unless otherwise stated in the Statement of Work, the price for the Software Development Services will be on a time and materials basis at the rates set out in the Statement of Work and the price for the Developed Software Support Services will be on a time and materials basis at the rates set out in the separate specific Service Description. Any prices given for Software Development Services and Developed Software Support Services are for Business Hours only. In the event Software Development Services and/or Developed Software Support Services are required outside of Business Hours, the price for such Software Development Services and/or Developed Software Support Services will be charged at two (2) times the rate set out in the Statement of Work.

### 32. SUPPORT AND MANAGED SERVICES

#### General

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

#### Support and Managed Services

- 32.2 A description of the Support and Managed Services We will provide to You and how We intend to provide the Support and Managed Services to You will be as set out in a separate specific Service Description. Any separate specific Services Description provided by Us will form part of the Contract between You and Us relating to Support and Managed Services.
- 32.3 We will provide You with the Support and Managed Services in accordance with Good Industry Practice and any applicable Service Description from time to time.
- 32.4 Subject to Clauses 10.11 and 10.12, the price for the Support and Managed Services will be as set out in the Statement of Work.

#### Duration

- 32.5 The minimum term for Support and Managed Services will be two (2) years from the date of commencement of the Support and Managed Services, unless stated otherwise in a Statement of Work. Thereafter, the Support and Managed Services will automatically renew for a subsequent twelve (12) month period at each anniversary unless and until terminated by You providing notice of Your intention not to renew the Support and Managed Services not less than ninety (90) days prior to the next anniversary of the Support and Managed Services.

- 32.6 We reserve the right to propose amendments to the scope of the Support and Managed Services and/or the applicable Charges by giving not less than one hundred and twenty (120) days' written notice prior to the next anniversary of the Support and Managed Services. If You do not accept the proposed amendments, either party may elect to terminate the Support and Managed Services on the next anniversary date without further liability, provided that written notice of termination is given to the other party no less than thirty (30) days prior to that anniversary date.

### 33. HARDWARE

#### General

- 33.1 This section sets out the Service Specific Terms that You and Us agree will apply where the supply of Goods, Software and Services by Us includes the sale of hardware in the applicable Statement of Work.

#### Hardware description

- 33.2 We will supply hardware to You in accordance with the Hardware manufacturer's specification.
- 33.3 Risk in the hardware will pass on delivery but title will not pass until the price has been paid in full by You.
- 33.4 The price for the hardware will be as agreed between You and Us.

### 34. DATA SERVICES

#### General

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

#### Data Services

- 34.2 A description of the Data Services will be as set out in the Statement of Work.
- 34.3 We will provide You with the Data Services set out in the Statement of Work in all material respects and in accordance with Good Industry Practice.
- 34.4 Subject to Clauses 10.11 and 10.12 and unless otherwise stated in the Statement of Work, the price for the Data Services will be on a time and materials basis at the rates set out in the Statement of Work. Any prices given for Data Services are for Business Hours only. In the event Data Services are required outside of Business Hours, the price

for such Data Services will be charged at two (2) times the rate set out in the Statement of Work.

reasonable costs incurred by Us in executing documents or performing actions necessary to effect and perfect such assignment.

## Part C: USE OF ARTIFICIAL INTELLIGENCE SYSTEMS

### 35. GENERAL

35.1 To supplement and enhance our service-delivery, We may use AI Systems (as defined below), provided by third party providers or developed in-house by Us, in our provision of the Goods, Software and Services. In the event that We do use such AI Systems, We will do so in accordance with the provisions of this 'Part C: Use of Artificial Intelligence Systems.'

35.2 Likewise, where our provision of Goods, Software or Services specifically includes Us assisting in the development or implementation of AI Systems We will do so in accordance with the provisions of this 'Part C: Use of Artificial Intelligence Systems.'

### 36. Definitions

36.1 For the purposes of this 'Part C: Use of Artificial Intelligence Systems', the below terms shall be defined as follows:

36.1.1 **"AI Policy"** has the meaning provided in Clause 37.1;

36.1.2 **"AI System"** means a system designed to perform tasks or operations with elements of autonomy that would otherwise require human involvement, and which is developed and trained using a knowledge base of data and inputs, on which the AI system makes inferences to achieve objectives using advanced analytical techniques to produce system-generated Outputs (as defined below);

36.1.3 **"AI User"** means any Personnel within our organisation that may use, interact with, develop or implement an AI System; and

36.1.4 **"Outputs"** means the outputs (including but not limited to data, text, sound, video, image, code, or other content) generated by an AI System for a particular use case in response to an input.

### 37. Principles and Values

37.1 We maintain a comprehensive AI policy, which We will amend and update from time to time in order to ensure that We continuously comply with changes in applicable artificial intelligence regulation. This policy, which may be updated from time to time, is available here: <https://www.transparency.com/wpcontent/uploads/2024/12/Policy-AI-External.pdf>.

37.2 We, and our AI Users will, adhere to the principles set out in the AI Policy wherever possible in our use, deployment, and development of AI Systems.

37.3 Where We become aware of any non-compliance with the AI Policy by an AI User, we will investigate such claims and may take appropriate action against such individuals in accordance with our internal policies and procedures.

37.4 If You have any queries or concerns about our use of AI Systems, please contact [hello@transparency.com](mailto:hello@transparency.com).

### 38. Use Cases

38.1 We may deploy AI Systems, in the provision of the Goods, Software and Services, for particular use cases.

38.2 You hereby consent to Us using AI Systems in the provision of the Goods, Software and Services for the use cases that may be communicated to You by Us from time to time.

### 39. Ownership of Rights

39.1 All New IPR, excluding any intellectual property rights in any Outputs, will be owned by Us or our licensors (as applicable).

39.2 Subject to Clause 39.3 below, all intellectual property rights in any Output shall vest in You upon creation, subject to full payment of all sums due to Us under the Contract. Until such payment is made in full, We shall retain ownership of all rights in the Output. To the extent that any rights do not automatically vest in You upon full payment, We shall assign all right, title, and interest in and to such Output to You, provided that You cover any

39.3 For the avoidance of doubt:

39.3.1 this assignment does not include any rights in or to the underlying AI System, infrastructure, or platform provided by any third-party; and

39.3.2 We make no assignment or warranty in respect of any third-party content or tools used in the generation of the Outputs, except to the extent We have the right to do so.

39.4 To the extent any deliverables incorporate any Outputs owned by Us in accordance with Clauses 40.1 – 40.2 (inclusive), We will licence You the right to use such Outputs in accordance with the provisions of Clause 10.4.

39.5 Where We use AI Systems in the generation of Bespoke Software IP or Data Service Deliverables, then:

39.5.1 to the extent permitted by applicable law and/or any licence in place between Us and a third party AI System provider;

39.5.2 provided that payment has been made by You in full of all sums owed;

39.5.3 subject to Clause 11.4 (as applicable),

We shall assign to You any intellectual property rights subsisting in any Output produced by the relevant AI System, to the extent such Output forms part of the Bespoke Software IP.

39.6 To the extent that any intellectual property rights in any Output are assigned to You from Us in accordance with Clause 39.5 above, You will grant Us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use any Output solely for the purpose of providing the Goods, Software and Services to You.

39.7 For clarity, any materials licensed to Us in accordance with Clause 11.9 may be used by Us for the purposes of prompting/inputting into AI Systems. For the avoidance of doubt, You will retain ownership of such materials to the extent that they are incorporated into the relevant prompt/input. However, where a particular input/prompt is created using our own expertise, materials, and/or knowledge, We shall retain all such intellectual property rights in such.

### 40. Data Security

40.1 In the event that We use Personal Data in the generation of inputs or prompts, We will:

40.1.1 process, and keep confidential, such Personal Data in accordance with the terms of the Contract and our Privacy Policy; and

40.1.2 keep such Personal Data safe and secure, applying the same security measures and safeguards as We would for its own Personal Data.

### 41. Liability

41.1 Where We provide You with access to one of our AI Systems, for example, a chatbot used as part of our customer service platform, You are solely responsible for ensuring that You use the systems in accordance with:

41.1.1 the AI Policy;

41.1.2 our reasonable instructions; and

41.1.3 any terms of use provided by a third party provider (as applicable).

41.2 With prejudice to the provisions of Clause 9, We will not be liable for any Loss suffered by You which arises as a result of Your failure to comply with Clause 41.1.

### 42. Suspension of the Services

42.1 Where We become aware of any misuse of a particular AI System, or where We have reasonable grounds to suspect that You may fail, or have failed, to comply with Clause 41.1, We reserve the right to suspend our provision of the Goods, Software and Services immediately and without notice.