

THIS AGREEMENT is dated on the earlier of signature of the first Quote or first Service Order by the Supplier and the Customer (both as defined below):

- (1) **KASCADE.** Kascade is a trading name of **COMPUTERWORLD (SYSTEMS) LIMITED** incorporated and registered in England and Wales with company number 04625112 whose registered office is at Apex House Turner Drive, Westerleigh Business Park, Yate, Bristol, England, BS37 5YX, Throughout this agreement, references to Kascade shall also include Computerworld (Systems) Limited. Computerworld (Systems) Limited and Kascade are used interchangeably to represent our business and services (**the Supplier**); and
- (2) the customer as set out in the Supplier's Quote and/or Service Order (**the Customer**).

BACKGROUND:

- (A) The Supplier is in the business of providing IT services and in particular provides IT solutions, consultation, training and support (**Available Services**).
- (B) The Customer wishes to obtain and the Supplier wishes to provide the Available Services on the terms set out in this Agreement.

IT IS HEREBY AGREED as follows:

1 INTERPRETATION

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

Agreement	means the terms of this Agreement, relevant the Quote and the relevant Service Order.
Available Services	has the meaning given to it in recital (A)
Business Day	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Change Order	has the meaning given in clause 10.1.
Contract Year	a contract year means a 12 month period commencing with the date of the relevant Service Order or any anniversary of it.
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010.
Customer Data	any information that is provided by or on behalf of the Customer to the Supplier as part of the Customer's use of the Managed Services, including any information derived from such information.

Customer's Equipment	any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Managed Services including any such items specified in a Service Order.
Customer's Materials	documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to the Supplier in connection with the Managed Services.
Deliverables	any output of the Managed Services to be provided by the Supplier to the Customer as specified in a Service Order and any other documents, products and materials provided by the Supplier to the Customer in relation to the Managed Services (excluding the Supplier's Equipment).
Effective Date	The earlier of the date the applicable Quote or Service Order is signed by both parties.
Good Industry Practice	means exercising that degree of skill, care, judgement, prudence and foresight in the provision of the Managed Services that would reasonably be expected from a person engaged in the provision of the same or similar type of services under the same or similar circumstances;
Hardware	all physical networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by the Supplier to deliver the Managed Services to the Customer.
Initial Term	the fixed or minimum term as set out in the Service Order.
Intellectual Property Rights or IPRs	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Intrusion	includes any intrusion from any third party, malware, malicious code, exfiltration of Customer Data, intrusion through a firewall or virus or physically implemented virus or attack, Trojan, worm and virus, lock, authorisation key or similar device that impairs or could impair the operation of the Software or the Managed Services.	Supplier's System	the information and communications technology system to be used by the Supplier (or any of its sub-contractors) in performing the Managed Services, including the Hardware, the Software, the Customer-site Equipment and communications links between the Hardware and the Customer-site Equipment and the Customer's Operating Environment.
Managed Services	the Available Services which are provided by the Supplier under a Service Order, including services which are incidental or ancillary to the Managed Services.	Term	means the Initial Term and any Successive Term agreed between the parties.
Milestone	a date by which a part or all of the Managed Services is to be completed, as set out in a Service Order.	TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).
Quote	the quote document populated with the Customer's details by the Supplier and referencing a Service Order and this Agreement.	VAT	value added tax or any equivalent tax chargeable in the UK or elsewhere.
Service Level Agreement	the service level agreement which is set out in the Service Order setting out the service levels applicable to the Managed Services.		
Software	any software used by the Supplier (or any of its sub-contractors) to provide the Managed Services to the Customer whether owned by a third party (Third Party Software), by the Customer (Customer Software) or by the Supplier (Supplier Software).		
Service Order Charges	the sums payable for the Managed Services as set out in a Service Order.		
Service Order Commencement Date	in respect of each Service Order, the commencement date for the Managed Services under that Service Order.		
Service Order	a service order agreed in accordance with clause 3, describing the Managed Services, any applicable Service Level Agreement and the Service Order Charges and the terms and conditions which shall apply to the provision, management and or delivery of the Managed Services.		
Successive Term	as defined in clause 2.2		
Supplier's Equipment	any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Managed Services, including any such items specified in a Service Order but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.		

1.2	Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
1.3	A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
1.4	The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
1.5	A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
1.6	Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
1.7	Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
1.8	This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
1.9	A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
1.10	A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
1.11	A reference to writing or written includes email and fax.
1.12	Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
1.13	A reference to this Agreement or to any other agreement or document is a reference to this Agreement or such other agreement or document, in each case as varied or novated from time to time.
1.14	References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
1.15	Any words following the terms including , include , in particular , for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Effective Date and shall continue until the expiry of the last Service Order, unless terminated earlier in accordance with clause 14 (Termination).
- 2.2 Each Service Order shall continue for the Initial Term and shall automatically renew at the end of any of the Initial Term (or any further Successive Term) for the same duration (each renewal period being a "Successive Term)", unless terminated in accordance with clause 14 (Termination).
- 2.3 The Customer may procure any of the Available Services by signing a Service Order with the Supplier pursuant to clause 3 (Service Orders). For the avoidance of doubt, a Service Order is not effective until both parties have signed the Quote.

3 SERVICE ORDERS

- 3.1 Each Service Order shall be agreed by both parties signing the Quote in the following manner:
- 3.1.1 the Customer shall ask the Supplier to provide any or all of the Available Services and provide the Supplier with as much information as the Supplier reasonably requests in order to prepare a draft Service Order for the Available Services requested;
- 3.1.2 following receipt of the information requested from the Customer the Supplier shall, as soon as reasonably practicable either:
- 3.1.2.1 inform the Customer that it declines to provide the requested Available Services; or
- 3.1.2.2 provide the Customer with a draft Service Order which shall include details of:
- 3.1.2.2.1 the Managed Services;
- 3.1.2.2.2 the Service Order Charges;
- 3.1.2.2.3 any specific terms and conditions applicable to the Managed Services; and
- 3.1.2.2.4 any applicable Service Level Agreement.
- 3.1.3 if the Supplier provides the Customer with a draft Service Order pursuant to clause 3.1.2.2, the Supplier and the Customer shall discuss and agree that draft Service Order; and
- 3.1.4 both parties shall sign the Quote (which constitutes both parties agreeing to the draft Service Order) when it is agreed.
- 3.2 The Supplier may charge for the preparation of Service Orders on a time and materials basis in accordance with the Supplier's standard rates (as may be notified by the Supplier to the Customer from time to time).
- 3.3 Once a Service Order has been agreed and signed in accordance with clause 3.1.4, no amendment shall be made to it except in accordance with clause 10 (Change control) or clause 19 (Variation).
- 3.4 Each Service Order shall form part of this Agreement and shall not form a separate contract to it.

- 3.5 Clause 4 to clause 32 of this Agreement shall apply mutatis mutandis to each Service Order unless otherwise agreed by the Parties in a Service Order.

4 SUPPLIER'S RESPONSIBILITIES

- 4.1 The Supplier shall provide the Managed Services from the date specified in the relevant Service Order until the expiry or termination of the Service Order.
- 4.2 The Supplier undertakes that the Managed Services will be performed with all reasonable skill and care and in accordance with Good Industry Practice and the provisions of this Agreement and that the Managed Services will be provided in accordance with the Service Order in all material respects.
- 4.3 The undertaking in clause 4.2 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to the Supplier's instructions.
- 4.4 If the Managed Services do not conform with the undertaking in clause 4.2, the Supplier shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking in clause 4.2.
- 4.5 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Managed Services shall be uninterrupted or error-free.
- 4.6 The Supplier shall observe all health and safety and security requirements that apply at any of the Customer's premises and that have been communicated to it in advance under clause 5.1.4, provided that it shall not be liable under this Agreement or any Service Order if, as a result of such observation, it is in breach of any of its obligations under this Agreement or any Service Order.
- 4.7 Where any third party software is required and or used in connection with the provision of the Managed Services (including and without limitation any Third Party Software):
- 4.7.1 the Supplier expressly excludes any warranty to the Customer that the third-party software supplied to or licensed by the Customer will operate in accordance with, and or perform, the material functions and features as set out in the marketing, sales or other associated documentations relating to such third party software; and
- 4.7.2 the Customer shall:
- 4.7.2.1 be and remain liable for any and all payments owed to the supplier of the third party software (including and without limitation where such third party software is payable through or via the Supplier) throughout this Agreement and until the end of the respective licence terms; and
- 4.7.2.2 shall throughout this Agreement and until the end of the respective licence terms adhere to any end user licence agreements sent by such third party in relation to the third party software.

5 CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:

- 5.1.1 co-operate with the Supplier in all matters relating to the Managed Services;
- 5.1.2 provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier including any such access as is specified in a Service Order;
- 5.1.3 provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Service Order or otherwise reasonably required by the Supplier in connection with the Managed Services and ensure that they are accurate and complete;
- 5.1.4 inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises;
- 5.1.5 obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Managed Services, including in relation to the installation of the Supplier's Equipment, the use of all Customer Materials and the use of the Customer's Equipment in all cases before the date on which the Managed Services are to start;
- 5.1.6 keep, maintain and insure the Supplier's Equipment in accordance with the Supplier's instructions from time to time and not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation;
- 5.1.7 comply with all applicable laws and regulations with respect to its activities under this Agreement; and
- 5.1.8 carry out all other Customer responsibilities set out in this Agreement or in the Service Order (as applicable) in a timely and efficient manner.
- 5.2 The Customer shall not store, distribute or transmit through the Managed Services any material that:
- 5.2.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
- 5.2.2 facilitates illegal activity;
- 5.2.3 depicts sexually explicit images; and/or
- 5.2.4 promotes unlawful violence, discrimination based on race, gender, age, disability,
- sexual orientation, religion, belief or gender reassignment, or any other illegal activity.
- 5.3 The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).
- 5.4 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 the Supplier in writing. This includes (but shall not be limited to) informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack, Intrusions or any other malware impacting or effecting the shared access infrastructure. In the event of any such incident, the Supplier shall 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).
- 5.5 The Supplier reserves the right to:
- 5.5.1 modify the Supplier's System, its network, system configurations or routing configuration; or
- 5.5.2 modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network,
- provided that this has no adverse effect on the Supplier's obligations under this Agreement and its provision of the Managed Services. If such changes will have an adverse effect, the Supplier will agree any such changes with the Customer in accordance with clause 10 (Change control) or clause 19 (Variation).
- 5.6 The Customer acknowledges and agrees that the Supplier may assess the Customer's current installations which may include a site audit. The Managed Services shall not commence unless and until the Supplier has confirmed acceptance of the Customer's current installations. The Supplier reserves the right to charge an additional fee in the event it reasonably deems that any of the Customer's current installations require remedial action to bring the installation system into a supportable state for the Managed Services. Any such installation system will be considered by the parties to be unsupported under the agreement and applicable Service Order until such a time such remedial action has been fully completed to the Supplier's satisfaction.
- 5.7 In the event the Customer introduces new hardware, software or systems to the Customer's installations after entering into this Agreement or the applicable Service Order:
- 5.7.1 the Customer must provide the Supplier with reasonable notice in advance of such new hardware, software or systems being introduced;
- 5.7.2 the Supplier shall be given an opportunity to review the new hardware, software or systems so as to ensure that the introduction of such new hardware, software or systems does not affect the Services and /or the Supplier's ability to provide the Services; and

- 5.7.3 where the Supplier considers (acting reasonably) that the new hardware, software or systems affect the Services, the Supplier shall notify the Customer and issue a Change Order in accordance with the terms of clause 10.
- 5.8 The Customer shall not provide the Managed Services directly or indirectly to third parties unless otherwise agreed by the Supplier or as indicated in the Service Order.
- 5.9 The Supplier shall be entitled to publicise the work the Supplier undertakes under this Agreement and any Service Order (including but not limited to case studies) and the Supplier shall have a licence to use of any and all of the Customer's logos and trademark names for that purpose.
- 5.10 If the Supplier's performance of its obligations under this Agreement or any Service Order is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the:
- 5.10.1 Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer; and
- 5.10.2 Customer shall be liable for any costs incurred by the Supplier in connection with:
- 5.10.2.1 the Customer's failure to comply with the terms of this Agreement and or any Service Order;
- 5.10.2.2 any adjustment to any timetable or delivery schedule.

6 CUSTOMER DATA AND SECURITY

- 6.1 The Supplier shall promptly notify the Customer in writing of any actual or suspected loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or unauthorised access to or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).
- 6.2 The Parties agree to comply with the provisions of Schedule 1 (Data Protection).
- 6.3 The:
- 6.3.1 Supplier shall ensure that the Supplier's System is designed, maintained and upgraded at all times so as to minimise the risk of attack by Intrusion;
- 6.3.2 parties agree that if any Intrusion is found, each of them shall co-operate with the other to reduce the effect of the Intrusion and, particularly if Intrusion causes loss of operational efficiency or loss or corruption of Customer Data, the parties shall assist each other to mitigate any losses and restore the Managed Services to their original operating efficiency.

- 6.4 The costs of complying with clause 6.3 shall be apportioned between the parties on a pro rata basis according to fault.
- 6.5 The Customer agrees and acknowledges that in the event any Intrusion affects any of the Customer's systems the Supplier shall not be under any liability whatsoever for such Intrusion.
- 6.6 The Customer shall promptly inform the Supplier if it suspects or uncovers any breach of security or any Intrusion and shall use all commercially reasonable endeavours to promptly remedy such breach.

7 WARRANTIES

- 7.1 The Customer warrants that:
- 7.1.1 it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Customer;
- 7.1.2 it has the authority to grant any rights to be granted to the Supplier under this Agreement, including the right to provide the Software and Hardware to the Supplier as indicated in this Agreement and for the same to be used in the provision of the Managed Services and otherwise in connection with this Agreement;
- 7.1.3 it shall comply with and use the Managed Services in accordance with the terms of this Agreement and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws;
- 7.1.4 it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to license to the Supplier, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement, including any third-party licences and consents in respect of any Software;
- 7.1.5 the Supplier's possession and use in accordance with this Agreement of any Customer Materials (including third-party materials supplied by the Customer to the Supplier) shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party; and
- 7.1.6 it shall maintain and comply with any licence of Third Party Software which the Supplier reasonable requires the Customer to maintain and comply with in connection with the provision of the Managed Services.
- 7.2 The Supplier warrants that:
- 7.2.1 it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;

- 7.2.2 it owns, or has obtained valid licences, consents, permissions and rights to enable the Supplier 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 Managed Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- 7.2.3 it shall comply with all applicable laws and regulations in performing its obligations under this Agreement;
- 7.2.4 the Customer's possession and use in accordance with this Agreement of any materials (including third-party materials) supplied by the Supplier to the Customer shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party;
- 7.2.5 any software or system provided by or on behalf of the Supplier shall be tested for Intrusions and any identified Intrusions deleted in accordance with Good Industry Practice before the date of delivery or use of such software or systems by the Supplier; and
- 7.2.6 all personnel and sub-contractors used by the Supplier in the performance of this Agreement are adequately skilled and experienced for the activities they are required to perform.

8 CHARGES

- 8.1 In consideration of the provision of the Managed Services by the Supplier, the Customer shall pay the Service Order Charges.
- 8.2 The Service Order Charges shall be set out fully in the applicable Service Order.
- 8.3 The Customer shall pay the Service Order Charges within 30 days from receipt of invoice or monthly by Direct Debit, as stated in the terms of the Service Order.
- 8.4 Where the Service Order Charges are payable in advance, the Supplier reserves all rights to not provide any of the Managed Services until it has received the Service Order Charges in cleared funds.
- 8.5 Work required on weekends, out of work hours (outside the hours of 8am-6pm) or public holidays, at Customers request, may (at the Supplier's sole discretion) incur a higher charge as notified to the Customer or as set out in the Service Order.
- 8.6 The Service Order Charges exclude the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice:
- 8.6.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals

whom the Supplier engages in connection with the Managed Services; and

- 8.6.2 the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Managed Services as such items and their cost are approved by the Customer in advance from time to time.
- 8.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this Agreement on the due date:
- 8.7.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
- 8.7.2 the Supplier may suspend part or all of the Managed Services until payment has been made in full.
- 8.8 All sums payable to the Supplier under this Agreement:
- 8.8.1 are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- 8.8.2 shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.9 The Supplier reserves the right to increase the Service Order Charges:
- 8.9.1 once each calendar year by the higher of 3% and the percentage increase in the CPI over the twelve months prior to the date on which the Supplier reviews the Service Order Charges. The Supplier will provide the Customer with no less than one months' written notice of the Service Order Charges increase; and
- 8.9.2 at any time during the Term to reflect any increase in the fees, costs or charges payable by the Supplier to any third party provider in respect of the Managed Services.
- ## 9 NON-SOLICITATION AND EMPLOYMENT
- 9.1 The Customer shall not, without the prior written consent of the Supplier, at any time from the date on which any Managed Services commence to the expiry of 6 months after the completion of such Managed Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee of the Supplier in the provision of such Managed Services.

9.2 Any consent given by the Supplier in accordance with clause 9.1 shall be subject to the Customer paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee.

10 CHANGE CONTROL

10.1 Either party may propose changes to the scope or execution of the Managed Services, but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- 10.1.1 the Managed Services;
- 10.1.2 the Service Order Charges;
- 10.1.3 the timetable for the Managed Services; and
- 10.1.4 any of the other terms of the relevant Service Order.

10.2 If the Supplier wishes to make a change to the Managed Services it shall provide a draft Change Order to the Customer.

10.3 If the Customer wishes to make a change to the Managed Services:

- 10.3.1 it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
- 10.3.2 the Supplier shall, as soon as reasonably practicable after receiving the information at clause 10.3.1, provide a draft Change Order to the Customer.

10.4 If the parties:

- 10.4.1 agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Service Order; or
- 10.4.2 are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 29.

10.5 The Supplier may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 10.3 on a time and materials basis at the Supplier's standard rates.

11 INTELLECTUAL PROPERTY RIGHTS

11.1 Nothing in this Agreement affects either party's rights in pre-existing Intellectual Property Rights (including pre-existing Intellectual Property Rights of either party contained in or relating to Confidential Information).

11.2 In relation to the Deliverables:

- 11.2.1 the Supplier and its licensors shall retain ownership of all IPRs in the Deliverables;
- 11.2.2 the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive,

royalty-free licence during the term of the relevant Service Order to use the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Managed Services and the Deliverables in its business; and

11.2.3 the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 11.2.2.

11.3 In relation to the Customer Materials and Customer Data, the Customer:

11.3.1 and its licensors shall retain ownership of all IPRs in the Customer Materials and Customer Data; and

11.3.2 grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Customer Materials and Customer Data for the term of this Agreement for the purpose of providing the Managed Services to the Customer.

11.4 The Supplier:

11.4.1 warrants that the receipt and use of the Managed Services and the Deliverables by the Customer shall not infringe any Intellectual Property Rights, of any third party;

11.4.2 shall, indemnify the customer against all direct losses, costs, expenses, suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third parties Intellectual Property Rights arising out of, or in connection with, the receipt, use of the Managed Services and Deliverables in accordance with the terms of this Agreement and the applicable Service Order.

11.4.3 shall not be in breach of the warranty at clause 11.4, and the Customer shall have no claim under the indemnity at clause 11.4.2 to the extent the infringement arises from:

11.4.3.1 the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Managed Services or any Deliverable;

11.4.3.2 any modification of the Managed Services or any Deliverable, other than by or on behalf of the Supplier; and

11.4.3.3 compliance with the Customer's specifications or instructions.

11.5 The Customer:

11.5.1 warrants that the receipt and use in the performance of this Agreement by the

Supplier, its agents, subcontractors or consultants of the Customer Materials and or Customer Data shall not infringe any Intellectual Property Rights, of any third party; and

11.5.2 shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Customer Materials.

11.6 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 11, the Indemnified Party shall:

11.6.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 11.4.2 or clause 11.5.2 (as applicable) (**IPRs Claim**);

11.6.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs 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;

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

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

12 CONFIDENTIALITY

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.

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

12.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the

purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement (**Representatives**). Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

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

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

12.4 Information shall not be deemed confidential information where such information:

12.4.1 is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 14);

12.4.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

12.4.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

12.4.4 was known to the receiving party before the information was disclosed to it by the disclosing party;

12.4.5 the parties agree in writing is not confidential or may be disclosed; or

12.4.6 is developed by or for the receiving party independently of the information disclosed by the disclosing party.

13 LIMITATION OF LIABILITY

13.1 This 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

13.1.1 any breach of this Agreement;

13.1.2 any breach of a Service Order

13.1.3 the provision by the Supplier and any use made by the Customer of the Managed Services.

13.2 Except as expressly provided in this Agreement:

13.2.1 the Customer assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use;

- 13.2.2 Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Managed Services, or any actions taken by the Supplier at the Customer's direction; and
- 13.2.3 all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this Agreement.
- 13.3 Nothing in this Agreement or any Service Order excludes or limits the liability of the Supplier for:
- 13.3.1 death or personal injury caused by the Supplier's negligence;
- 13.3.2 fraud or fraudulent misrepresentation; or
- 13.3.3 any other liability which cannot lawfully be excluded or limited.
- 13.4 Subject to clause 13.3:
- 13.4.1 the Supplier shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or for any indirect or consequential loss, costs, damages, charges or expenses however arising;
- 13.4.2 the Supplier's 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 this Agreement shall be limited to the price paid or payable for the Managed Services under the Service Order during that Contract Year which the liability arises in respect of; and
- 13.4.3 the Supplier's 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:
- 13.4.3.1 any Service Order; and /or
- 13.4.3.2 the provision by the Supplier, and any use made by the Customer of the Managed Services under a Service Order,
- in a Contract Year shall be limited to the price paid or payable for the Managed Services under that Service Order during that Contract Year.
- 13.5 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event

shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

14 TERMINATION

- 14.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement and or any Service Order with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- 14.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 14.2 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:
- 14.2.1 the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- 14.2.2 there is a change of Control of the Customer.
- 14.3 The Customer may terminate a Service Order during the Term on giving not less than 90 days' written notice to the Supplier, provided that on any such termination it shall, without prejudice to any accrued rights or obligations as at that time, be obliged to pay termination compensation to the Supplier, such termination compensation to be an amount which is not less than the Service Order Charges which would have been payable under the relevant Service Order until the end of any Term had that Service Order not been terminated.
- 14.4 If the Customer does not wish to enter into a Successive Term with the Supplier, it must provide the Supplier with 90 days' written notice to terminate prior to the end of the relevant Term.
- 14.5 A request to terminate a Service Order must be made in writing to cancellations@kascade.co.uk.
- 14.6 The Supplier may terminate a Service Order:
- 14.6.1 on giving not less than 30 days' notice to the Customer; or
- 14.6.2 with immediate effect by giving written notice to the Customer if any agreement with a third party granting the Supplier the rights to provide the services under the Service Order expires or is terminated for any reason.
- 14.7 The termination of a Service Order shall not result in the termination of any other Service Order.
- 14.8 The termination of this Agreement shall not unless otherwise agreed between the parties, result in the termination of any Service Order.

15 OBLIGATIONS ON TERMINATION AND SURVIVAL

15.1 Obligations on termination or expiry

15.1.1 On termination or expiry of a Service Order:

15.1.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Managed Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

15.1.1.2 the Customer shall, within a reasonable time, return all of the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping;

15.1.1.3 the Supplier shall on request return any of the Customer Materials not used up in the provision of the Managed Services.; and

15.1.1.4 the Supplier shall assist the Customer and/or any replacement supplier to the extent reasonably required to facilitate the smooth migration of the Managed Services to the Customer or the replacement supplier. If termination occurs due to the Customer's breach and/or default, the Supplier may charge a reasonable sum to cover the cost of providing such co-operation and assistance, in all other circumstances such cooperation and assistance shall be provided at no cost to the Customer.

15.1.2 If a party is required by any law, regulation, or government or regulatory body (**Regulatory Requirement**) to retain any documents or materials, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 12 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.

15.2 Survival

15.2.1 Any provision of this Agreement or any Service Order that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement or any applicable Service Order shall remain in full force and effect.

15.2.2 Termination or expiry of this Agreement or any Service Order shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach

of the agreement which existed at or before the date of termination or expiry.

16 FORCE MAJEURE

16.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

16.1.1 acts of God, flood, drought, earthquake or other natural disaster;

16.1.2 epidemic or pandemic;

16.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

16.1.4 nuclear, chemical or biological contamination or sonic boom;

16.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

16.1.6 collapse of buildings, fire, explosion or accident; and

16.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and

16.1.8 interruption or failure of utility service.

16.2 Provided it has complied with clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

16.4 The Affected Party shall:

16.4.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

16.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 24 weeks the party not affected by the Force Majeure Event

may terminate this Agreement by giving 1 months' written notice to the Affected Party.

17 ANTI – BRIBERY

17.1 The Supplier shall:

17.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (**Relevant Requirements**); and

17.1.2 have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and shall enforce them where appropriate;

17.2 The Supplier shall ensure that any person associated with the Supplier or who is otherwise performing services in connection with this Agreement does so only on the basis of a written contract that imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 17(**Relevant Terms**). The Supplier 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.

18 ASSIGNMENT AND OTHER DEALINGS

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

18.2 The Supplier may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement, provided that the Supplier gives prior written notice of such dealing to the Customer.

19 VARIATION

Subject to clause 10 (Change control), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20 WAIVER

20.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

20.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

20.3 A party that waives a right or remedy provided under this Agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

21 RIGHTS AND REMEDIES

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

22 SEVERANCE

22.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

22.2 If any provision or part-provision of this Agreement is deemed deleted under clause 22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

23 ENTIRE AGREEMENT

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

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

24 CONFLICT

24.1 If there is an inconsistency between any of the provisions of (i) a Quote; (ii) a Service Order and (iii) these Terms, the terms set out in the document ranked higher shall prevail (with the Quote being the highest ranked document).

24.2 Subject to paragraph 2.6 of Schedule 2, if there is an inconsistency between any of the provisions of this Agreement and the provisions of the Schedules, the provisions of this Agreement shall prevail.

25 NO PARTNERSHIP OR AGENCY

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

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

26 THIRD PARTY RIGHTS

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

27 NOTICES

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

27.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

27.1.2 sent by fax to its main fax number or sent by email to accounts@kascade.co.uk or such other email address notified by the relevant party from time to time.

27.2 Any notice shall be deemed to have been received:

- 27.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 27.2.2 if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or
- 27.2.3 if sent if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 27.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

28 COUNTERPARTS

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

28.2 No counterpart shall be effective until each party has executed at least one counterpart.

29 DISPUTE RESOLUTION PROCEDURE

29.1 If a dispute arises under or in connection with this Agreement (**Dispute**), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 29.

29.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five Business Days):

- 29.2.1 appoint a representative who has authority to settle the Dispute and is at a higher management level than the person with direct responsibility for the administration of this Agreement (**Designated Representative**); and
- 29.2.2 notify the other party of the name and contact information of its Designated Representative.

29.3 Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency 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 shall be complied with as soon as reasonably practicable).

29.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.

29.5 Notwithstanding any other provision of this Agreement, a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.

30 TUPE

The parties shall comply with the terms of Schedule 2.

31 GOVERNING LAW

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

32 JURISDICTION

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

In witness whereof this document has been executed and delivered on the date first stated above.

Schedule 1

DATA PROTECTION

1 DEFINITIONS AND INTERPRETATION

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

Customer Personal Data any Personal Data comprised in the Customer Data which the Supplier processes in connection with this Agreement and or a Service Order in the capacity of a Processor on behalf of the Customer.

Data Protection Legislation all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Commissioner or other relevant regulatory authority and applicable to a party. The terms **Commissioner, Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures** shall be as defined in the Data Protection Legislation.

2 DATA PROCESSING

2.1 Each party undertakes that it shall comply with all applicable requirements or the Data Protection Legislation when performing its obligations under this Agreement and or any Service Order. This paragraph 2.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

2.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer shall be the Controller, and the Supplier shall be the Processor in respect of all data processing activities in relation to Customer Personal Data that the Supplier carries out under this Agreement and or any Service Order. The relevant Service Order sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.

2.3 Without prejudice to the generality of clause 2.1, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to the Supplier and/or lawful collection of the same by the Supplier for the duration and purposes of this Agreement and any Service Order.

2.4 Without prejudice to the generality of clause 2.1, the Supplier undertakes to the Customer that it shall, in relation to any Customer Personal Data processed in

connection with the performance of its obligations under this Agreement and any Service Order:

2.4.1 process that Customer Personal Data, including updating, correcting and deleting such Customer Personal Data, only in accordance with this Schedule and the written instructions of the Customer unless the Supplier is required by applicable law to otherwise process that Customer Personal Data. Where the Supplier is relying on applicable law as the basis for processing Customer Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the applicable law unless the applicable law prohibits the Supplier from so notifying the Customer;

2.4.2 implement appropriate technical and organisational measures to protect such Customer Personal Data against unauthorised or unlawful processing and accidental loss, destruction, damage, alteration or disclosure 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;

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

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

2.4.5 notify the Customer without undue delay on becoming aware of a Personal Data Breach involving the Customer Personal Data;

2.4.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of this Agreement or any applicable Service Order unless the Supplier is required by applicable law to continue to process that Customer Personal Data. For the purposes of this paragraph 2.4.6 Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and

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

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

2.5.1 appoint Processors to process the Customer Personal Data, provided that the Supplier:

2.5.1.1 shall ensure that the terms on which it appoints such Processors comply with Data Protection Legislation,

and are consistent with the obligations imposed on the Supplier in this Schedule;

2.5.1.2 shall remain responsible for the acts and omission of any such Processor as if they were the acts and omissions of the Supplier; and

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

2.5.2 transfer Customer Personal Data outside of the UK as required for the purposes of the Agreement and any applicable Service Order, provided that the Supplier shall ensure that all such transfers are effected in accordance with Data Protection Legislation. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the Commissioner from time to time.

2.6 In providing the Services, the Supplier may be required to transfer Customer Personal Data to organisations that are Data Controllers rather than Data Processors. These organisations will not be sub-processors of the Supplier and instead, these organisations will have full obligations of Data Controllers in relation to the Customer Personal Data that they receive. The Customer hereby provides its general authorisation for the Supplier to transfer the Customer Personal Data to such organisations.

2.7 The Supplier may, at any time on not less than 30 days' notice, revise this Schedule by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

2.8 The Customer agrees to indemnify, keep indemnified and defend at its own expense the Supplier against all costs, claims, damages or expenses incurred by the Supplier or for which the Supplier may become liable due to any failure by the Customer or its employees, subcontractors or agents to comply with any of its obligations under this Schedule 1.

2.9 Specific details of the processing and those organisations appointed by the Supplier as data processors and/or data controllers, are set out in the Service Order.

Schedule 2

TUPE

1 TUPE ON ENTRY

- 1.1 The Customer and the Supplier do not believe or intend that, pursuant to TUPE, the Supplier will upon the commencement of this Agreement or any Service Order (**Relevant Commencement Date**) become the employer of any employees of the Customer or the Customer's incumbent IT supplier (**Existing Employer**).
- 1.2 In the event that, notwithstanding the intentions of the parties set out at paragraph 1.1 above, TUPE is deemed to apply at the Relevant Commencement Date then the remaining provisions under this paragraph 1 shall apply.
- 1.3 If any person who is or was an employee of an Exiting Employer claims or it is determined that his/her contract of employment has been transferred from the relevant Exiting Employer to the Supplier pursuant to TUPE or claims that his/her employment would have so transferred had he/she not resigned or been dismissed (**Customer Transferring Employees**), then the Customer shall, or shall procure that the applicable Exiting Employer shall, offer employment to such person within thirty (30) days of becoming aware of the same or being so notified by the Supplier. If such offer of employment is accepted, the Supplier shall immediately release the person from his/her employment. If after that period has elapsed, no such offer of employment has been made to such person or such offer has been made but not accepted by such person, the Supplier may within sixty (60) days give notice to terminate the employment of such person.
- 1.4 The Customer shall indemnify the Supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 1.4.1 any act or omission by the Exiting Employer in relation to any contract of employment, employment relationship or collective agreement concerning one or more of the Customer Transferring Employees in the period prior to the Relevant Commencement Date; and
- 1.4.2 any failure by a Exiting Employer to comply with any requirement of Regulations 13 or 14 of the TUPE;
- 1.4.3 the termination of the Customer Transferring Employees' (or any one of them) employment in accordance with paragraph 1.3; and
- 1.4.4 any claim made at any time by any Customer Transferring Employee where such claim relates to:
- 1.4.4.1 the period prior to the Relevant Commencement Date;
- 1.4.4.2 any failure by a Exiting Employer to comply with any requirement of Regulations 13 or 14 of the TUPE; and/or
- 1.4.4.3 the termination by the Supplier of their employment pursuant to paragraph 1.3 of this Agreement, (Claims).

- 1.5 Notwithstanding the belief and intention of the parties that TUPE does not apply at the Relevant Commencement Date, provided that the Customer shall on demand fully indemnify the Supplier in relation to any liabilities, damages, costs or expenses (including reasonable legal fees and expenses) incurred or borne by the Supplier in connection with the operation of this paragraph 1.5, the Supplier shall procure that its employees, agents and successors in title shall:
- 1.5.1 allow the Customer at its own cost, to conduct all negotiations and proceedings and to settle the Claims, always provided that the Customer shall obtain the Supplier's prior approval of any settlement terms, such approval not to be unreasonably withheld or delayed;
- 1.5.2 not, without prior consultation with the Customer, make any admission relating to the Claims or attempt to settle them, provided that the Customer considers and defends any Claims diligently, using competent counsel and in such a way as not to bring the reputation of the Supplier into disrepute;
- 1.5.3 promptly subject to any restriction imposed by law or any court of competent jurisdiction, take such action in connection with the Claims as the Customer shall from time to time reasonably request;
- 1.5.4 promptly provide to the Customer such assistance and information as the Customer may reasonably request relating to the Claims to enable the Claims to be pursued;
- 1.5.5 promptly subject to any restriction imposed by law or any court of competent jurisdiction, provide the Customer, its legal and other advisers with access to all documents, records or other information held by the Supplier relating to the Claims;
- 1.5.6 promptly provide the Customer and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Customer with the preparation of its cases in relation to the Claims;
- 1.5.7 promptly permit and require such employees as the Customer and/or its professional advisers may reasonably request to meet with the Customer and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with counsel or experts and/or to attend any court hearing or trial in connection with the Claims for so long and as frequently as the Customer and/or its legal or other professional advisers may reasonably require;
- 1.5.8 promptly subject to any restriction imposed by law or any court of competent jurisdiction, provide such other assistance as the Customer may reasonably request in order to ensure the due and timely prosecution of the Claims;
- 1.5.9 promptly subject to any restriction imposed by law or any court of competent jurisdiction, preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Claims in their possession without first obtaining the Customer's consent to such waiver, such consent not to be unreasonably withheld.
- 1.6 The obligations in this paragraph 1 shall survive the expiry or termination of this Agreement.

2 TUPE ON EXIT

2.1 The Supplier shall not supply an organised grouping of employees whose principal purpose is to carry out any Managed Services or any other services provided under this Agreement to the Customer and as a consequence the parties believe and intend that TUPE shall not be applicable on expiry or termination of this Agreement or any Service Order (**Relevant Termination Date**), howsoever caused so as to transfer the employment of any employees of the Supplier, any affiliate or any subcontractor of the Supplier (**the Supplier Employers**), to the Customer, or any replacement supplier of the Managed Services (the Incoming Supplier which for the avoidance of doubt may include the Customer) (**the Customer Employers**).

2.2 In the event that, notwithstanding the intentions of the parties set out in paragraph 2.1 above, TUPE is deemed to apply on the Relevant Termination Date, then the remaining provisions under this paragraph 2 shall apply.

2.3 If any person who is an employee of the Supplier Employers claims or it is determined that his/her contract of employment has been transferred from the relevant Supplier Employer to a Customer Employer pursuant to TUPE or claims that his/her employment would have so transferred had he/she not resigned or been dismissed (Supplier Transferring Employee), then the Supplier shall, or shall procure that any of its applicable affiliates or subcontractors shall, offer employment to such person within thirty (30) days of becoming aware of the same or being so notified by the Customer. If such offer of employment is accepted, the Customer shall (or shall procure that its relevant Customer Employer shall) immediately release the person from his/her employment. If after that period has elapsed, no such offer of employment has been made to such person or such offer has been made but not accepted by such person, the Customer or the relevant Customer Employer may within sixty (60) days give notice to terminate the employment of such person.

2.4 The Supplier shall indemnify and keep the Customer indemnified against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered including, without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

2.4.1 any act or omission by the Supplier Employer in relation to any contract of employment, employment relationship or collective agreement concerning one or more of the Supplier Transferring Employees in the period prior to the Relevant Termination Date; and

2.4.2 any failure by a Supplier Employer to comply with any requirement of Regulations 13 or 14 of the TUPE;

2.4.3 the termination of the Supplier Transferring Employees' (or any one of them) employment in accordance with paragraph 2.3; and

2.4.4 any claim made at any time by any Supplier Transferring Employee where such claim relates to:

2.4.4.1 the period prior to the Relevant Termination Date;

2.4.4.2 any failure by a Exiting Employer to comply with any requirement of Regulations 13 or 14 of the TUPE; and/or

2.4.4.3 the termination by the Customer Employer of their employment pursuant to paragraph 2.3,

(**Supplier Claims**).

2.5 Notwithstanding the belief and intention of the parties that TUPE will not apply at the Relevant Termination Date, provided that the Supplier shall on demand fully indemnify the Customer in relation to any liabilities, damages, costs or expenses (including reasonable legal fees and expenses) incurred or borne by the Customer in connection with the operation of this paragraph 2.5, the Customer shall procure:

2.5.1 that its employees, subcontractors and agents;

2.5.2 the Customer Employers' employees, subcontractors and agents, shall:

2.5.3 allow the Supplier at its own cost, to conduct all negotiations and proceedings and to settle the Supplier Claims, always provided that the Supplier shall obtain the Customer's prior approval of any settlement terms, such approval not to be unreasonably withheld or delayed;

2.5.4 not, without prior consultation with the Supplier, make any admission relating to the Supplier Claims or attempt to settle them, provided that the Supplier considers and defends any Supplier Claims diligently, using competent counsel;

2.5.5 subject to any restriction imposed by law or any court of competent jurisdiction, take such action in connection with the Supplier Claims as the Supplier shall from time to time reasonably request;

2.5.6 provide to the Supplier such assistance and information as the Supplier may reasonably request relating to the Supplier Claims to enable the Supplier Claims to be pursued;

2.5.7 subject to any restriction imposed by law or any court of competent jurisdiction, provide the Supplier, its legal and other advisers with access to all documents, records or other information held by the Customer relating to the Supplier Claims;

2.5.8 provide the Supplier and/or its professional advisers and experts with access from time to time to such members of staff as may be necessary to assist the Supplier with the preparation of its cases in relation to the Supplier Claims;

2.5.9 permit and require such employees of the Customer Employers as the Supplier and/or its professional advisers may reasonably request to meet with the Supplier and/or its legal advisers in normal working hours to prepare witness statements for trial, attend meetings with counsel or experts and/or to attend any court hearing or trial in connection with the Supplier Claims for so long and as frequently as the Supplier and/or its legal or other professional advisers may reasonably require;

2.5.10 subject to any restriction imposed by law or any court of competent jurisdiction, provide such other assistance as the Supplier may reasonably request in order to ensure the due and timely prosecution of the Supplier Claims;

2.5.11 subject to any restriction imposed by law or any court of competent jurisdiction, preserve and not waive legal professional privilege or any other privilege attaching to any of the documents or other information relating to the Supplier Claims in their possession without first obtaining the Supplier's consent to such waiver, such consent not to be unreasonably withheld.

2.6 The obligations in this paragraph 2 shall survive the expiry or termination of this Agreement.