

Kascade Microsoft 365 Terms and Conditions

1 INTERPRETATION

The following definitions and rules of interpretation apply in this Contract.

1.1 Definitions:

Additional Licences	means any Licences purchased pursuant to clause 4.4 of these terms which are in excess of the Threshold Licence Number immediately preceding their purchase.
Affiliates	means any person controlling, controlled by, or under common control with another person.
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. shall have the meaning given to it in clause 4.6.
Cancellation Period	
Cancelled Licences	shall have the meaning given to it in clause 4.6.
Cancelled Licence Fee	shall have the meaning given to it in clause 4.6.
Change Control Procedure	the procedures set out in clause 9.
Claims	all claims, Losses (excluding punitive and exemplary damages), causes of action, costs, judgements and awards whether arising under contract, tort or other law.
Commencement Date	the date specified in the Quotation.
Conditions	these terms and conditions as amended from time to time in accordance with clause 19.2.
Confidential Information	all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party or that party's Representatives which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.
Contract	the Contract between the Supplier and the Customer for the supply of the Services and the Licences in accordance with the Quotation and these Conditions.
control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly and the terms controlled and controlling shall be construed accordingly
Customer	the person or firm who purchases Services from the Supplier.
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 Services, including any information derived from such information.
Customer Software	has the meaning given to that term in the definition of Software.
Customer's Operating Environment	the Customer's computing environment (consisting of hardware, software and internet networks) that is to be used by the Customer in connection with its use of the Services and which interfaces with the Supplier's System in order for the Customer to receive the Services.
Customer's Project Manager	the person nominated by the Customer to act as the Customer's project manager from time to time.
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications). The terms controller , processor , personal data and processing shall be as defined in the Data Protection Legislation.
Deliverables	the deliverables set out in the Quotation produced by the Supplier for the Customer including, without limitation all deliverables and all other reports, documents, materials, techniques, ideas, concepts, trade marks, know-how, algorithms, software, computer code, routines or sub-routines, specifications, plans, notes, drawings, designs, pictures, images, text, audiovisual works, inventions, data, information and other items, expressions, works of authorship or work product of any kind that are authored, produced, created, conceived, collected, developed, discovered or made by the Supplier (or any of its sub-contractors or licensors) in connection with the Services or which relate in any manner to the Services or which result from any work performed by the Supplier (or any of its sub-contractors or its licensors) for the Customer.
Designated Representative	has the meaning given to it in clause 16.
Dispute	has the meaning given to it in clause 16.
Domestic Law	the law of the United Kingdom or a part of the United Kingdom.
Fees	the fees payable to the Supplier, as described in the Quotation for Services, the Licences and where applicable Third Party Software as the same may be adjusted from time to time in accordance with the terms of this Contract.
Force Majeure Event	shall have the meaning given to it in clause 15.1.
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 Services to the Customer.
Initial Cancellation Period	shall have the meaning given to it in clause 4.6.
Initial Term	shall be the Initial Term set out in the Quotation.
Intellectual Property Rights	patents, 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

Licences	the licences granted to the Customer by the Licensor to use the O365 Product in accordance with the Microsoft Terms, as further detailed in the Quotation.
Licence Fees	that part of the Fees payable by the Customer to the Supplier in relation to the Licences.
Licensor	Microsoft Corporation or any of its Affiliates with whom the Customer enters into the Microsoft Terms.
Losses	losses, liabilities, damages, costs, charges, awards, compensation, fines, losses, orders, penalties, disbursements, payments and expenses.
Microsoft Terms	any licence agreement, data processing agreement, service level agreement and/or other agreement, terms or policies that apply to the Customer's use of the O365 Product including (but not limited to) any such terms set out or referred to in the Quotation, as may be amended by the Licensor from time to time.
O365 Product	the Microsoft Office 365 software product(s), as further detailed in the Quotation.
Quotation	the Quotation to which these Conditions are attached.
Relevant Period	means the Initial Term or the Successive Term.
Representative	shall have the meaning given to it in clause 18.4.1.
Service Level Agreement	any service level agreement which is set out or referred to in the Quotation.
Services	the services, including the Deliverables, supplied by the Supplier to the Customer as set out or referred to in the Quotation.
Software	any software used by the Supplier (or any of its sub-contractors) to provide the Services to the Customer whether owned by a third party (Third Party Software), by the Customer (Customer Software) or by the Supplier.
Successive Term Supplier	shall have the meaning given to it in clause 3.1. KASCADE. Kascade is a trading name of ComputerWorld (Systems) Limited whose registered number is 04625112 and whose registered office is at Apex House, Turner Drive, Westerleigh Business Park, Bristol, 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.
Supplier's System	the information and communications technology system to be used by the Supplier (or any of its sub-contractors) in performing the Services, including any Hardware, Software, and communications links between the Hardware and the Customer's equipment and the Customer's Operating Environment.
Term	the Initial Term and any Successive Term.
Third Party Additional Terms	any additional terms and conditions, including any data processing terms, of any Third Party Provider including, without limitation, any such terms set out or referred to in the Quotation, but excluding the Microsoft Terms
Third Party Provider	a person who is not the Supplier who provides any Services or Third Party Software on its own behalf or on behalf of the Supplier including, without limitation, any such third parties set out or referred to in the Quotation, but excluding the Licensor.
Third Party Software	has the meaning given to that term in the definition of Software.
Threshold Licence Number	means the number of Licences specified in the Quotation, as may be adjusted from time to time in accordance with clause 4.4 and clause 4.5

1.2 Interpretation:

1.2.1	A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
1.2.2	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.
1.2.3	A reference to writing or written includes fax and email.
1.2.4	A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2 BASIS OF CONTRACT

2.1	The Quotation constitutes an irrevocable offer by the Customer to purchase Services and the Licences in accordance with this Contract.
2.2	The Quotation shall only be deemed to be accepted when the Supplier issues written acceptance of the Quotation at which point and on which date the Contract shall come into existence.
2.3	Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
2.4	These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
2.5	Any quotation given by the Supplier shall not constitute an offer, and is only valid, unless otherwise agreed by the Supplier for a period of 15 Business Days from its date of issue.

3 TERM

3.1	This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, for the Initial Term, thereafter it shall renew automatically for successive terms which shall be equal to the period of the Initial Term (each a Successive Term), such Successive Term commencing on the day after the expiry of the Initial Term or relevant Successive Term (as the case may be) unless:
3.1.1	subject to clause 3.2, the Customer gives to the Supplier 60 days' advance notice to terminate the Contract;

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- 3.1.2 the Supplier gives to the Customer 15 days' advance notice to terminate the Contract,
such that the Contract shall terminate on the final day of the then current Initial Term or Successive Term (as the case may be).
- 3.2 Where the Relevant Period of the Contract is 1 month, the Customer shall be entitled to terminate the Contract on giving to the Supplier 30 days advance notice, such notice to expire on the last day of the then current Initial Term or Successive Term, such that the Contract shall terminate on the final day of the then current Initial Term or Successive Term (as the case may be).
- ### 4 LICENCES
- 4.1 Subject to payment by the Customer of all Fees and the Customer's compliance with the terms of the Contract, the Supplier shall during the Term procure the grant of the Threshold Licence Number of Licences to the Customer by the Licensor.
- 4.2 The Customer shall be bound by and comply with the Microsoft Terms for the duration of the Term.
- 4.3 For the avoidance of doubt, the Licences shall be granted directly by the Licensor to the Customer pursuant to the Microsoft Terms and the Supplier shall not be party to the Microsoft Terms, nor shall it be subject to any rights or obligations under the Microsoft Terms. Further, the Supplier shall not be liable to the Customer for any Claims arising from or in connection with the O365 Product and/or the Microsoft Terms.
- 4.4 The Customer may, with the Supplier's consent in writing (which may be given by email) purchase Additional Licences at any time during the Term and the Threshold Licence Number shall be increased following each such purchase:
- 4.4.1 by the number of Additional Licences purchased by the Customer pursuant to this clause 4.4; or
- 4.4.2 in the event that the Customer cancels Additional Licences purchased pursuant to this clause 4.4 in accordance with clause 4.6 during the Cancellation Period relating to those Additional Licences, by the number of Additional Licences retained by the Customer at the end of the relevant Cancellation Period.
- 4.5 The Threshold Licence Number may not, subject to clause 4.6, be reduced until the end of the then current Initial Term or Successive Term (as the case may be) and then only if the Customer serves at least:
- 4.5.1 1 month written notice on the Supplier, where the Relevant Period is 1 month; or
- 4.5.2 2 months' written notice on the Supplier, where the Relevant Period more than 1 month,
such notice to expire on the expiry of the then current Initial Term or Successive Term (as the case may be).
- 4.6 The Customer may within 72 hours of purchasing Additional Licences pursuant to clause 4.4 (**Cancellation Period**) cancel one or more of those Additional Licences and where any such Additional Licences are cancelled pursuant to this clause 4.6 (**Cancelled Licences**), the following payment terms shall apply in respect of those Cancelled Licences:
- 4.6.1 If the Customer cancels one or more of the Additional Licences within the initial twenty-four (24) hours of the Cancellation Period (**Initial Cancellation Period**), no Licence Fee shall be payable in respect of the Additional Licences cancelled in the Initial Cancellation Period
- 4.6.2 If the Customer cancels one or more of the Additional Licences in the period commencing on the expiry of the Initial Cancellation Period and ending on the expiry of the Cancellation Period, the Customer shall be liable to pay the Licence Fee for the Additional Licences (**Cancelled Licence Fee**), such Cancelled Licence Fee to be calculated on a pro-rata basis by reference to the period over which the Cancelled Licences were held by the Customer.
- 4.7 The Customer shall indemnify, defend and hold harmless the Supplier, the Supplier's Affiliates and their respective directors, officers, employees, shareholders and agents against any and all Losses that the Supplier may incur (including (without limitation) any Losses incurred by the Supplier as a result of any Claim issued against it by the Licensor) in connection with any breach or non-compliance with the Microsoft Terms by the Customer, the Customer's Affiliates and / or their respective directors, officers, employees, shareholders and/or agents.
- ### 5 SUPPLY OF SERVICES
- 5.1 Subject to clause 5.2, the Supplier shall supply the Services from the Commencement Date in accordance with this Contract.
- 5.2 The Customer acknowledges and agrees that the Supplier may assess the Customer's current infrastructure, equipment (including any Hardware) and networks which may include a site audit. The Services shall not commence unless and until the Supplier has confirmed acceptance of the Customer's current infrastructure, equipment (including Hardware) and networks. The Supplier reserves the right to charge an additional fee in the event it reasonably deems that any part of the Customer's current infrastructure, equipment (including Hardware) and networks require remedial action to bring the infrastructure, equipment (including Hardware) and networks into a supportable state for the Services.
- 5.3 Subject to clause 5.7, the Supplier agrees that in supplying the Services, the Supplier shall:
- 5.3.1 perform the Services with reasonable care and skill;
- 5.3.2 use reasonable endeavours to perform the Services in accordance with the description of the Services set out or referred to in the Quotation;
- 5.3.3 use reasonable endeavours to perform the Services in accordance with the Service Level Agreement (where applicable);
- 5.3.4 comply with all applicable laws, statutes and regulations provided that the Supplier shall not be liable under this Contract, if as a result of such compliance it is in breach of any of its obligations under this Contract.
- 5.4 The undertaking in clause 5.3 shall not apply to the extent of any non-conformance that is caused by use of the Services contrary to the Supplier's instructions.
- 5.5 If the Services do not conform with the undertaking in clause 5.3 the Supplier shall, at its expense, use 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 5.3.
- 5.6 Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services shall be uninterrupted or error-free.
- 5.7 These Conditions shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided under this Contract.
- ### 6 CUSTOMER'S OBLIGATIONS
- 6.1 The Customer shall:
- 6.1.1 co-operate with the Supplier in all matters relating to the Services;
- 6.1.2 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, information and other facilities as reasonably required by the Supplier or any of them;
- 6.1.3 provide, in a timely manner, such information as the Supplier may reasonably require in connection with the Services, and ensure that it is accurate and complete in all material respects;
- 6.1.4 provide such personnel, assistance, and other Customer personnel, as may be reasonably requested by the Supplier from time to time in connection with the Services;
- 6.1.5 appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to these Conditions. The Customer shall use reasonable endeavours to ensure continuity of the Customer's Project Manager, but has the right to replace him from time to time where reasonably necessary in the interests of the Customer's business;
- 6.1.6 not store, distribute or transmit through the Services any material that:
- 6.1.6.1 is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
- 6.1.6.2 facilitates illegal activity;
- 6.1.6.3 depicts sexually explicit images; and/or
- 6.1.6.4 promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity.
- 6.2 The Customer shall remain responsible for the use of the Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).
- 6.3 The Customer must take reasonable measures to ensure it does not jeopardise services supplied by the Supplier or otherwise to third parties on the same shared infrastructure as used by the Supplier to provide Services to the Customer or as used by the Customer to enjoy the Services. This includes (without limitation) informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. 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 Services).
- 6.4 The Supplier reserves the right to:
- 6.4.1 modify the Supplier's System, its network, system configurations or routing configuration; and
- 6.4.2 modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network,
provided that any such changes have no materially adverse effect on the Supplier's obligations under the Contract and its provision of the Services. If such changes will have an adverse effect, the Supplier shall notify the Customer and the parties shall follow the Change Control Procedure with a view to amending the Services accordingly.
- 6.5 In the event the Customer introduces new hardware or systems to the Customer's infrastructure, equipment (including Hardware) and networks after entering into the Contract, the Customer must ensure it has obtained written confirmation from the Supplier that such new infrastructure, equipment and / or networks subsequently introduced meet the Supplier's approval. The cost of obtaining such approval (including any necessary re-assessment audit or further site survey) shall be chargeable to the Customer by the Supplier.
- 6.6 The Customer shall indemnify, defend and hold harmless:
- 6.6.1 the Supplier, the Supplier's Affiliates and their respective directors, officers, employees, shareholders, agents; and
- 6.6.2 the Third Party Providers, their Affiliates and their respective directors, officers, employees, shareholders and agents,
(**Indemnified Persons**) against all Claims (including Claims by governmental entities seeking to impose penal sanctions) relating to or resulting from the content (except for content solely created by the Indemnified Persons) of any communications transmitted via the Services, or the Indemnified Persons' networks and services by the Customer, or any person accessing the Services, or the Indemnified Persons' networks and services on the Customer's behalf or with the Customer's consent or any person using the Customer's account credentials to access the Services, or the Indemnified Persons' networks and services.
- 6.7 The Supplier shall have the right to audit the books and records of the Customer at the Supplier's reasonable expense in order to review the Customer's compliance with its obligations under this Contract, such audit shall be at reasonable intervals and upon at least twenty-four (24) hours' prior notice, either by means of a site visit by the Supplier or its Representatives or by means of requests for supporting documents. The Customer shall cooperate fully with the Supplier's exercise of the audit rights set forth in this clause.
- 6.8 The Customer's use of any Services and/or Third Party Software provided by a Third Party Provider shall be subject to the Third Party Additional Terms. The Customer shall indemnify, defend and hold harmless the Supplier, the Supplier's Affiliates and their respective directors, officers, employees, shareholders and agents against any and all Losses that the Supplier may incur (including (without limitation) any Losses incurred by the Supplier as a result of any Claim issued against it by any Third Party Provider) as a result of any breach or non-compliance with the Third Party Additional Terms by the Customer, the Customer's Affiliates and / or their respective directors, officers, employees, shareholders and/or agents.
- ### 7 WARRANTIES
- 7.1 The Customer warrants and undertakes that:
- 7.1.1 it has the full capacity and authority to enter into and perform this Contract and that this Contract 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 Contract, including the right to provide the Software and Hardware to the Supplier for the same to be used in the provision of the Services and otherwise in connection with this Contract;
- 7.1.3 it shall comply with and use the Services in accordance with the terms of this Contract and all applicable laws, and shall not do any act that shall infringe the rights of any third party;
- 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 Contract, including any third-party licences and consents in respect of any Customer Software;
- 7.1.5 the Supplier's possession and use in accordance with this Contract of any 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

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- 7.1.6 save in relation to the O365 Product, in respect of which clause 4 shall apply, it shall be a bona-fide licenced user of any Third Party Software set out in the Contract.
- 7.2 The Supplier warrants and undertakes that:
- 7.2.1 it has the full capacity and authority to enter into and perform this Contract and that this Contract 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 Contract and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Contract including for the Customer's use and receipt of the 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 Contract.
- 8 FEES AND PAYMENT**
- 8.1 The Customer shall pay the Fees in accordance with the terms set out in the Quotation.
- 8.2 Unless otherwise specified in the Quotation, the Fees shall be payable by the Customer to the Supplier monthly in arrears. The Licence Fees shall be calculated based on the applicable Threshold Licence Number from time to time. In the event that the Threshold Licence Number is increased in accordance with clause 4.4 part way through a month during the Term, the additional Licence Fees payable by the Customer in respect of each such Additional Licences shall be calculated on a pro rata basis and shall be added to the next month's invoice together with any Cancelled Licence Fees payable in respect of any Additional Licences cancelled pursuant to clause 4.6 in that month.
- 8.3 All amounts and Fees stated or referred to in this Contract are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.4 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 8.5 The Supplier reserves the right to increase the Fees:
- 8.5.1 on an annual basis with effect from each anniversary of the Commencement Date (**Review Date**) by the higher of 3% and the percentage increase in the CPI over the twelve months prior to the relevant Review Date; and/or
- 8.5.2 at any time during the Term to reflect any increase in the fees, costs or charges payable by the Supplier to the Licensor and/or any Third Party Provider in respect of the Services and/or Licences.
- 8.6 Unless otherwise set out in the Quotation, the Customer shall pay each invoice submitted by the Supplier:
- 8.6.1 within 15 days of the date of the invoice; and
- 8.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 8.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13 the Customer shall pay:
- 8.8.1 interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.8 will accrue each day at 1.5% a month or the maximum rate permitted by law; and
- 8.8.2 the Supplier for its reasonable and necessary costs of collection incurred, including, without limitation, reasonable legal fees and the Supplier's costs of disconnecting and reconnecting Customers for non-payment.
- 8.9 All amounts due under the Contract 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).
- 9 CHANGE CONTROL**
- 9.1 Subject to clause 9.5.1 below, if either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.
- 9.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 9.2.1 the likely time required to implement the change;
- 9.2.2 any variations to the Fees arising from the change;
- 9.2.3 the likely effect of the change on the Services; and
- 9.2.4 any other impact of the change on this Contract.
- 9.3 If either party wishes the other party to proceed with the relevant change referred to in clause 9, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the Fees, the Services and any other relevant terms of this Contract to take account of the change.
- 9.4 Once changes have been agreed by the parties, the parties shall sign a written agreement confirming their agreement to any changes agreed pursuant to this clause.
- 9.5 Notwithstanding the foregoing provisions of this clause 9:
- 9.5.1 the Supplier shall be entitled to change the Services from time to time provided that such changes do not have a material adverse effect on the Services (as those Services were provided immediately prior to the change);
- 9.5.2 any request by the Customer to change the Services will be subject to the Supplier's consent in writing and where such consent has been given, the parties having entered into a written agreement (in the form determined by the Supplier) setting out the terms and conditions which apply to such change;
- 9.5.3 in the event that the Supplier and the Customer agree any changes to the Services during the Term, unless otherwise agreed by the Supplier the Services as amended by such change:
- 9.5.3.1 shall continue until the expiry of the Term; or
- 9.5.3.2 if agreed, by the Supplier the then current Initial Term or Successive Term.
- 9.6 For the avoidance of doubt, the Supplier shall be under no obligation to accept or agree to any changes to the scope or execution of the Services requested by the Customer pursuant to this clause 9 and any such decision shall be entirely at the Supplier's discretion.
- 10 INTELLECTUAL PROPERTY RIGHTS**
- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier (or its licensors).
- 10.2 The Supplier grants to 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 to use the Software and the Deliverables for the purpose of receiving and using the Services and the Deliverables.
- 10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 10.2.
- 10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any Customer Data provided to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 11 DATA PROTECTION**
- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.2 The parties have determined that, for the purposes of the Data Protection Legislation, the Supplier shall act as controller of any personal data of the Customer which the Supplier processes in connection with this Contract.
- 11.3 By entering into this Contract, the Customer consents to all actions taken by the Supplier in connection with the processing of any personal data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://www.kascade.co.uk/terms/privacy-policy>. In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Contract, the Privacy Policy will take precedence.
- 12 LIMITATION OF LIABILITY**
- 12.1 This clause 12 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 any and all claims which relate to or which may arise in relation to a contract, including without limitation, any claim for:
- 12.1.1 any breach of Contract;
- 12.1.2 any use made by the Customer of the Services (including any Software); and
- 12.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 12.2 Except as expressly provided in this Contract:
- 12.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction; and
- 12.2.2 all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this Contract.
- 12.3 Nothing in this Contract excludes or limits the liability of the Supplier for:
- 12.3.1 death or personal injury caused by the Supplier's negligence;
- 12.3.2 fraud or fraudulent misrepresentation; or
- 12.3.3 any other liability which cannot lawfully be excluded or limited.
- 12.4 Subject to clause 12.3:
- 12.4.1 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, loss of use or loss of data, interruption of business, loss of revenue or similar losses, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
- 12.4.2 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 the Contract, and the performance or contemplated performance of the Services under this Contract shall be limited to the lower of:
- 12.4.2.1 the amounts paid by the Customer to the Supplier under this Contract;
- 12.4.2.2 the aggregate of the Fees paid by the Customer to the Supplier over the Term; and
- 12.4.2.3 the Fees payable by the Customer to the Supplier in the first year of the Term.
- 13 TERMINATION**
- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- 13.1.2 the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 15 days after being notified to make such payment;
- 13.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 (being a partnership) has any partner to whom any of the foregoing apply;
- 13.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 13.1.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

- 13.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 13.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 13.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 13.1.9 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 13.1.10 the other party (being an individual) is the subject of a bankruptcy petition, application or order;
- 13.1.11 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 13.1.12 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1.3 to clause 13.1.11 (inclusive);
- 13.1.13 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 13.2 The Supplier may terminate the Contract:
- 13.2.1 with immediate effect by giving written notice to the Customer if there is a change of control of the Customer without affecting any other right or remedy available to it;
- 13.2.2 with immediate effect by giving written notice to the Customer if the Microsoft Terms and/or the agreement between the Supplier and the Licensor granting the Supplier the right to resell the Licences to the Customer expires or is terminated for any reason;
- 13.2.3 on giving 30 days' prior notice to the Customer.
- 13.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- 13.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
- 13.3.2 the Customer commits a material breach of any term of the Contract;
- 13.3.3 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 13.1.3 to clause 13.1.11 (inclusive)
- 13.4 Any request to terminate this agreement must be made in writing to cancellations@kascade.co.uk.
- 14 CONSEQUENCES OF TERMINATION**
- 14.1 On termination or expiry of the Contract:
- 14.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.1.2 the Customer shall return all software, materials, documents and any other item (whether or not tangible) belonging to the Supplier and any Deliverables which have not been fully paid for to the Supplier. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;
- 14.1.3 the Customer shall immediately uninstall and discontinue all use of any software, applications or SAAS solutions provided by the Supplier under this Contract;
- 14.1.4 all licences granted under the Contract, including all Licences, shall immediately cease and the Customer shall immediately discontinue all use of any O365 Product;
- 14.1.5 otherwise than as a result of the Supplier's uncured default or clause 15, the Customer shall promptly reimburse the Supplier for any sums that the Supplier is required to pay to its suppliers or sub-contractors for the depreciated value of any Hardware that such suppliers or sub-contractors have had to procure from third parties in order to facilitate the provision of the Services;
- 14.1.6 by the Customer otherwise than as a result of the Supplier's breach of this Contract and/or the expiry of the Initial Term or then current Successive Term and or under clause 15, the Customer shall pay to the Supplier an amount equal to Fees that would have been payable over the period commencing on the date that the Contract is terminated and ending:
- 14.1.6.1 on the date that the Initial Term would have expired if it were not for such termination (where the Contract terminates prior to the expiry of the Initial Term); or
- 14.1.6.2 on the date that the then current Successive Term would have expired if it were not for such termination (where the Contract terminates after the expiry of the Initial Term).
- 14.2 Termination or expiry of the Contract 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 Contract which existed at or before the date of termination or expiry.
- 14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 15 FORCE MAJEURE**
- 15.1 Neither party shall have any liability to the other under this Contract if it is prevented from, or delayed in, performing its obligations under this Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (including any industrial disputes involving the workforce of the Supplier), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a **Force Majeure Event**), provided that:
- 15.1.1 the other party is notified of such an event and its expected duration; and
- 15.1.2 it uses reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned, and that if the period of delay or non-performance continues for 90 days or more, the party not affected may terminate this Contract by giving not less than 14 days' written notice to the other party.
- 15.2 Nothing in this clause 15 shall relieve the Customer of its obligation to pay the Fees in accordance with the terms of clause 8.
- 16 DISPUTE RESOLUTION**
- 16.1 If a dispute arises under or in connection with this Contract (**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 16.
- 16.2 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):
- 16.2.1 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 Contract (**Designated Representative**); and
- 16.2.2 notify the other party of the name and contact information of its Designated Representative.
- 16.3 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).
- 16.4 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.
- 16.5 Notwithstanding any other provision of this Contract a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.
- 17 ASSIGNMENT AND OTHER DEALINGS**
- 17.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 17.2 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 the Contract.
- 18 CONFIDENTIALITY**
- 18.1 The Customer:
- 18.1.1 acknowledges and agrees that the Supplier's Confidential Information includes any designs, plans, software or other materials created by the Supplier (or the Supplier's licensor) in connection with the Services; and agrees not to make use of any such designs, plans, software or other materials for any purpose other than receipt of the Services.
- 18.1.2 The Supplier acknowledges and agrees that the Customer Data is the Confidential Information of the Customer.
- 18.2 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.4.
- 18.4 Each party may disclose the other party's Confidential Information:
- 18.4.1 to its employees, officers, representatives, contractors, subcontractors 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18 (**Representatives**); and
- 18.4.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.5 The provisions of this clause shall not apply to any Confidential Information that:
- 18.5.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- 18.5.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- 18.5.3 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; or
- 18.5.4 the parties agree in writing is not confidential or may be disclosed; or
- 18.5.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 18.6 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 19 GENERAL**
- 19.1 Entire Agreement.** 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.
- 19.1.1 Each party acknowledges 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 or negligent misstatement based on any statement in the Contract.
- 19.1.2 Nothing in this clause shall limit or exclude any liability for fraud.
- 19.2 **Variation.** The Supplier may vary this Contract on giving notice to the Customer. Where the Customer proposes to vary this Contract, no such variation shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 19.3 **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.
- 19.4 **Severance.** If any provision or part-provision of the Contract 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. If any provision or part-provision of this Contract deleted under this clause 19.4 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.
- 19.5 **Notices.**
- 19.5.1 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 (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Quotation
- 19.5.2 Any notice shall be deemed to have been received:
- 19.5.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 19.5.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 19.5.2.3 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. In this clause 19.5.2.3, 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.
- 19.5.3 This clause 19.5 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 19.6 **No Partnership or Agency** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or constitute any party the agent of another party nor authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 19.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 19.8 **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.
- 19.9 **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.