

ELITE STANDARD TERMS AND CONDITIONS FOR IT PROFESSIONAL SERVICES (“STANDARD TERMS AND CONDITIONS”)

1. **DEFINITIONS**
- 1.1. In the Agreement, unless the context otherwise requires:
 - Act** means the Communications Act 2003;
 - Agreement** means in relation to a particular Service these Standard Terms and Conditions, and the relevant Order Form;
 - Applicable Anti-Bribery Law** means any bribery or fraud or other similar corruption law of any relevant country, including the Bribery Act and the US Foreign Corrupt Practices Act 1977 and laws enacted in accordance with the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
 - Associated Person** means in relation to any entity, a person who (by reference to all the relevant circumstances) performs services for or on behalf of that entity in any capacity and including, without limitation, employees, agents, subsidiaries, representatives and subcontractors;
 - Bribery Act** means the UK Bribery Act 2010 (as amended from time to time);
 - Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
 - Charges** mean all charges due to the Service Provider by You as set out on the Order Form or otherwise due to the Service Provider in accordance with the Agreement;
 - Confidential Information** means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 19;
 - Customer Equipment** means any equipment, and any software embodied therein (including without limitation; cabling, wiring, personal computers, network interface cards and network interface adapters) not forming part of (but which may be connected to) the Equipment and used by You in conjunction with any Equipment in order to obtain or use the Service;
 - Data Controller, Data Processor, Data Subject, Process/Processing, Personal Data and Personal Data Breach** will have the same meaning as given to them in the Data Protection Laws;
 - Data Protection Laws** means Regulation (EU) 2016/679 (“GDPR”) (to the extent applicable) and UK GDPR, together with binding guidance and codes of practice issued from time to time by relevant supervisory authorities;
 - Designated Equipment** means the hardware identifies by type in the Order Form;
 - Equipment** means any equipment that the Service Provider from time to time supplies to You (whether or not any Charges are made for such supply) in connection with the provision of the Service;
 - Group** means the corporate group comprising the Service Provider and each of its holding companies or subsidiaries from time to time and any subsidiary of any such holding company. The terms “subsidiary” and “holding company” having the meanings ascribed to them by section 1159, 1161 and 1162 of the Companies Act 2006, as amended;
 - Law** means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which a Party is from time to time subject;
 - Licensed Programs** means the software programs in object code form identified by title and reference number in the Order Form;
 - Licensed Program Materials** means the Licensed Programs and the Program Documentation;
 - Normal Working Hours** means 09:00 – 17:30 Monday to Friday excluding public holidays in the United Kingdom;
 - Order Form** means the Customer Order Form, which may be in a form provided by the Service Provider or any additional order information agreed by the Parties in writing (including e-mail), accepted by the Service Provider to order the Service subject to the Agreement;
 - Overtime** means any period outside of Normal Working Hours;
 - Party** means each of the Service Provider and You;
 - Personnel** means all employees, staff, officers, individual contractors, other workers, agents and consultants, of the Service Provider, its Group and/or any sub-contractor who are engaged in the provision of the Services, from time to time;
 - Program Documentation** means the instruction manuals user guides and other information to be made available by the Manufacturing Company at its discretion in either printed or machine readable form to You;
 - Regulatory Bodies** means in each applicable jurisdiction, those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Service Provider and “Regulatory Body” will be construed accordingly;
 - Service(s)** means the service(s) defined in the relevant Order Form;
 - Service Commencement Date** means the date the relevant Service is available for use by You or, if earlier, the date You start to use the Service (or part of the Service) or in the case of connectivity means the date that the circuit is installed by the carrier;
 - Service Provider** means Elitetele.com t/a Elite Group (company number 03228824);
 - Signed** means the Agreement being physically signed by both Parties, electronically signed by both Parties, the point at which the Service Provider explicitly accepts an order in writing (including by e-mail), or the point at which the Service Provider begins to fulfill any such Order (whichever is the earlier);
 - Site** means the site at which the Service shall be provided;
 - Software** means any software supplied to You by the Service Provider in connection with or to enable You to use the Service;
 - UK GDPR** means the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection Act 2018, and other data protection or privacy legislation in force from time to time in the United Kingdom;
 - You/Your** means the customer with whom the Service Provider makes the Agreement as set out in the Order Form, or where appropriate, any person representing You if it appears to the Service Provider that such person acts with Your authority or permission;
 - Your Data** means the data inputted by You, or the Service Provider on Your behalf for the purpose of using the Services or facilitating Your use of the Services;
 - You/Your** means the customer with whom the Service Provider makes the Agreement as set out in the Order Form, or where appropriate, any person representing You if it appears to the Service Provider that such person acts with Your authority or permission.
- 1.2. References in the Agreement:
 - 1.2.1. to a statutory provision will be interpreted as a reference to such provision as amended or re-enacted from time to time;
 - 1.2.2. to a “person” includes any company (as defined in Section 1 Companies Act 2006), firm, body corporate or corporation (as defined in Section 1173(1) Companies Act 2006) or person, partnership or organisation;
 - 1.2.3. to a Party includes its respective successors and permitted assigns and their respective employees and agents; and
 - 1.2.4. to any word in the singular include the plural and vice versa.
 - 1.3. References in these Standard Terms and Conditions to Clauses are unless otherwise stated to Clauses in these Standard Terms and Conditions.
 - 1.4. Headings are for convenience only and do not affect the interpretation of the Agreement.
 - 1.5. Where in the Agreement You agree not to do any act or thing You also agree not to allow (including without limitation, taking all reasonable preventative measures) any other person to do that act or thing. Where in the Agreement You specifically acknowledge any provision or statement, You are deemed to agree to such provision or statement.
 - 1.6. A reference to a third person or third party is a reference to a person who is not a Party.
 - 1.7. The words “include”, “including”, “for example” or “such as” are not used as, and are not to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
 - 1.8. In the event of any conflict, ambiguity or inconsistency between these Standard Terms and Conditions, the Order Form and any other document referred to or attached, the following order of precedence shall apply:
 - 1.8.1. the Order Form;
 - 1.8.2. these Standard Terms and Conditions for IT Professional Services; and
 - 1.8.3. any other document referred to or attached.
2. **ORDERING SERVICES**
 - 2.1. To order Services You must complete and submit the relevant Order Form.
 - 2.2. A binding contract shall arise when the Service Provider accepts the relevant Order Form and the Order Form is then Signed by both Parties.
3. **PROVISION OF SERVICES**
 - 3.1. The Service Provider will make available on-call remedial maintenance services and/or professional services (as detailed in the Order Form) to You during the Normal Working Hours.
 - 3.2. The Service Provider will use its reasonable endeavours to provide a response to service calls within the response times specified in the Order Form.
 - 3.3. The Service Provider will carry out any preventative maintenance/Service that the Service Provider shall deem necessary in order to keep the Equipment and/or Service in working order.
 - 3.4. The Service Provider may increase the Charges by giving You 25 days’ written notice of the increase.
 - 3.5. Overtime incurred at Your request will be charged at the Service Provider’s current rates from time to time.
4. **WARRANTIES**
 - 4.1. **WARRANTIES ON BEHALF OF THE SERVICE PROVIDER**
The method of correcting errors, malfunctions and defects and implementing corrections will be at the sole discretion of the Service Provider and will be undertaken in a professional manner by suitable qualified staff with skill and care.
 - 4.2. **WARRANTIES ON BEHALF OF YOU**
You are duly licensed to use all software which You wish to run on Your system and had fulfilled all of the terms of the relevant Software Licence relating to the use of such software.
 - 4.3. You hold all necessary licence and consents required by the Act in relation to Your data processing activities.
 - 4.4. You are not aware as at the date hereof of any existing fault in the Licensed Programs.
 - 4.5. The Service Provider accepts no responsibility for software updates installed or applied in order to meet the contracted software support requirements.
 - 4.6. You agree to carry out any minor maintenance stipulated or instructions given by the Service Provider from time to time and to operate the equipment in accordance with the equipment manufacturer’s handbook.
 - 4.7. You agree to ensure that an adequate supply of electricity and cooling is available for the correct operation of the equipment and to take reasonable care to ensure that this does not become affected by other equipment on the same power circuit.
 - 4.8. You agree to immediately notify the Service Provider of any fault or abnormal functioning of the equipment.
 - 4.9. You agree to operate use and generally treat the equipment in a prudent and proper manner and to avoid any activity in the vicinity of the equipment which could be prejudicial to the correct functioning of the equipment and to ensure that the equipment area is kept clean and tidy.
 - 4.10. You shall not allow any person except as shall be nominated by the Service Provider to maintain or repair the equipment during the period of this agreement.
 - 4.11. You shall notify the Service Provider if the equipment is to be removed from the Site specifying the date upon which such removal is to take place.
5. **TECHNICAL SUPPORT SERVICES**
 - 5.1. If ordered in accordance with Clause 2 above, and provided that You have paid the applicable Charges as detailed on the Order Form, the Service Provider shall endeavour to provide the Service and in respect of each of the Licensed Programs Technical Support as defined in Clauses 5.2 below.
 - 5.2. The Service Provider will respond to Your request for support services within the response time. Support is available by the following means:
 - 5.2.1. Telephone Support;
 - 5.2.2. Remote Access subject to You having a VPN or Remote Access facility available as set out in Appendix 1;
 - 5.2.3. Onsite Support (but only if this option has been selected as part of this Agreement);
 - 5.2.4. Chargeable visit at the rates set out in the Order Form;
 - 5.2.4.1. where Remote Access is not available due to circumstances beyond the Service Provider’s control; or
 - 5.2.4.2. where no suitable Remote Access set-up as set forth in Appendix 1 has been installed by the Service Provider.
 - 5.3. The Service Provider will respond to queries and/or problems in relation to the Licensed Programs and hardware detailed in the Order Form only.
 - 5.4. Technical Support shall not include the diagnosis and rectification of any fault resulting from:
 - 5.4.1. the improper use operation or neglect of either the Licensed Program Materials or the Designated Equipment, by You;
 - 5.4.2. the modification of the Licensed Programs or their merger (in whole or in part) with any other software, other than supplied by the Service Provider;
 - 5.4.3. the use of the Licensed Programs on equipment other than the Designated Equipment;
 - 5.4.4. the failure by You to implement recommendations in respect of or solutions to faults previously advised by the Service Provider;
 - 5.4.5. any repair adjustment alteration or modification of the Licensed Programs by any person other than the Service Provider without the Service Provider’s prior consent;
 - 5.4.6. any breach by You of any of Your obligations under any maintenance agreement in respect of the Designated Equipment;
 - 5.4.7. Your failure to install and use upon the Designated Equipment in substitution for the previous release any Modified Programs within 28 Days of receipt of the same; or
 - 5.4.8. the use of the Licensed Programs for a purpose for which they were not designed.
 - 5.5. The Service Provider shall upon request by You and at its absolute discretion provide Software Support notwithstanding that the fault results from any of the circumstances described in clause 5.4 above.
 - 5.6. Without prejudice to clause 5.5 above the Service Provider shall be entitled to levy reasonable Additional Charges in the manner set out in clause 5.7 below if Technical Support is provided in circumstances where any reasonably skilled and competent data processing operator would have judged Your request to have been unnecessary.
 - 5.7. Additional charges shall be levied by the Service Provider monthly in arrears and shall be payable by You within 14 days of issue of any invoice therefor, such Additional Charges shall be calculated in accordance with the rates of Additional Charges as set out in the Order Form.
6. **SYSTEM UPDATES**
 - 6.1. The Service Provider will apply patches and updates as appropriate and detailed in the Order Form, downloaded from the Licensed Programs and/or Designated Equipment supplier’s information systems. You will be responsible for purchasing software upgrades/updates where required to meet the Service Provider’s requirements. The Service Provider reserves the right to withdraw support in the event of the Licensor not maintaining manufacturers’ recommended release levels of the software, covered in the Order Form and any other software/hardware which affects items on the Order Form.
7. **CUSTOMER EQUIPMENT**
 - 7.1. Subject to Clauses 11.1 and 11.3 the Service Provider shall have no liability for any loss or damage arising directly or indirectly from use of the Customer Equipment, whether or not the Service Provider shall have recommended the use and/or performance of such Customer Equipment.
 - 7.2. You are entirely responsible for the security of access to Your computer systems, the integrity of information stored thereon and its security from corruption, change and abuse by others.
 - 7.3. Save as stated in the Agreement or as otherwise agreed in writing the Service Provider is not responsible for the repair and maintenance of Customer Equipment.
8. **ACCESS TO SITE AND INSPECTION**
 - 8.1. This Clause 8 shall apply where the Service Provider requires access to the Site in order to provide the Service.
 - 8.2. You warrant that You or Your customer (as appropriate) are the current and lawful occupier of the Site.
 - 8.3. Any person in apparent authority at the Site who grants entry shall be deemed to have Your authority to grant such entry.
 - 8.3. You shall provide a safe and suitable working environment for the Service Provider’s employees, agents or contractors at the Site.
9. **CHARGES PAYMENT AND INTEREST**
 - 9.1. You shall pay the Service Provider the Charges in respect of each item of Service.
 - 9.2. The Service Provider charges for Professional Services and labour, either by quotation or at a daily rate plus reasonable expenses. Any materials used will be charged appropriately. Professional Services Charges shall be invoiceable either (1) up front; (2) upon completion of the particular Services; or (3) monthly; at the discretion of the Service Provider.
 - 9.3. The Service Provider will provide an invoice for Charges via electronic mail only and the Service Provider may invoice, at any time, any Services omitted from a previous invoice.
 - 9.4. The fees, charges and prices payable are exclusive of Value Added Tax and any other applicable taxes which shall be paid by You at the rate and in the manner for the time being prescribed by law.
 - 9.5. Payment is due within fourteen (14) days of the date of the invoice, other than as permitted in Clause 9.7, by Direct Debit. If the payment which is properly due is not made within 10 business days from receiving written notice from the Service Provider specifying the invoice number and the amount due the Service Provider may suspend or cancel the Services and charge interest on all sums outstanding at a rate of 4% above the base rate of Barclays Bank Plc. The interest rate used will be that in force on the due date and will be applied from the due date to the date of actual payment.
 - 9.6. Should a Direct Debit collection fail without prior notification provided to the Service Provider by You, an administration charge of £25.00 will be charged to Your account.
 - 9.7. If You choose not to pay by Direct Debit You will notify the Service Provider of Your preferred payment method and You will be charged a processing fee of £5.00 per month. Where a payment is not received by the due date a late payment fee of £15.00 will be charged to Your account.
 - 9.8. Copy invoices and statements will be provided if requested within sixty (60) days of the document date free of charge. Copy invoices and statements requested from sixty-one (61) days of the document date will be subject to a £10 charge per invoice/statement.
 - 9.9. It is Your responsibility to check the monthly invoice for accuracy and notify the Service Provider promptly of any dispute. Any claims for a credit or refund must be notified to the Service Provider within thirty (30) days of receipt of invoice otherwise the invoice will be deemed accepted.
 - 9.10. You shall pay all amounts due in full without any deduction or withholding other than as required by law and shall not be entitled to assert any credit, set-off or counterclaim against the Service Provider to justify withholding any payment of any such amount in whole or in part.

10. SERVICE

- 10.1. The Service Provider shall provide the Service in accordance with the Agreement.
- 10.2. You must promptly supply the Service Provider with all information and materials reasonably required by the Service Provider to supply the Service. The Service Provider will have no responsibility for any failure of or to provide the Service which is a direct result of any failure on Your part to provide accurate and complete information.
- 10.3. The Service Provider shall use the reasonable skill and care of a competent IT service provider in providing the Service. However, You accept that it is technically impracticable to provide the Service entirely free of faults and the Service Provider does not undertake to do so.
- 10.4. The Service Provider shall use reasonable endeavours to meet such general service levels in relation to a particular Service as the Service Provider publishes from time to time. However, save as expressly stated in such published service levels, the Service Provider shall have no liability for any failure to meet any such service levels.

11. LIMITATIONS OF LIABILITY

- 11.1. Each Party accepts unlimited liability for fraudulent misrepresentation, death or personal injury resulting from its own negligence or that of its employees while acting in the course of their employment by such Party. However, nothing in this Clause gives a Party any right or remedy which it would not otherwise have.
- 11.2. Except as expressly stated in the Agreement all warranties, conditions, undertakings or terms, express or implied in respect of the Service are excluded to the fullest extent permitted by Law.
- 11.3. Nothing in the Agreement shall exclude or restrict a Party's liability for matters which cannot by Law be excluded or restricted.
- 11.4. Save in relation to payment of indemnities pursuant to this Agreement each Party's total aggregate liability (including without limitation liability for negligence) under the Agreement (other than for payment of Charges) in respect of each individual claim shall be limited to the Charges paid to the Service Provider by You for the applicable Service of which the claim relates.
- 11.5. Notwithstanding the above neither Party shall have any liability in contract, tort or otherwise (including liability for negligence), for loss or damage, whether direct or indirect, of business, production, data, operation time, goodwill, contracts, revenue, profits, for any loss of anticipated savings, for wasted expenditure or for any indirect or consequential loss whatsoever arising out of or in connection with the performance or non-performance by the Party of its obligations under the Agreement.
- 11.6. Any delay or failure by the Service Provider to perform any of its obligations under the Agreement that is caused by or materially contributed to by a restriction of a legal or regulatory nature that affects, wholly or partly, the provision of the Service, will not constitute a breach of the Agreement.
- 11.7. Unless stated on the Order Form, Clauses 11.1 – 11.6 set out each Party's entire liability (including any liability for the acts and omissions of its employees, agents or contractors) to the other Party in tort, contract or otherwise arising in connection with the performance, contemplated performance or non-performance of the Agreement. You acknowledge that the exclusions and limitations of the Service Provider's liability in the Agreement are reasonable taking into account (amongst other matters) the likelihood that any damages awarded to You for breach of the Agreement by the Service Provider may be disproportionately greater than the Charges.

12. ASSIGNMENT

- 12.1. You must not assign or delegate or otherwise deal with all or any of Your rights or obligations under the Agreement without the prior written consent of the Service Provider.
- 12.2. The Service Provider may assign or otherwise delegate all or any of its rights or obligations under the Agreement to any person or entity.

13. FORCE MAJEURE

- 13.1. Neither Party shall be liable for any breach of its obligations under the Agreement (other than in relation to payment of sums due) where it is hindered or prevented from carrying out its obligations by any cause outside its reasonable control. Such causes include, but are not limited to, fire, explosion, breakdown or failure of equipment, systems or facilities, strike, lock-out, labour dispute, illness, epidemic, flood, drought, war, civil commotion or requirement of any authority, fault or failure of a communications network, licensing or government agency.
- 13.2. Where such cause continues for more than 3 calendar months either Party may without additional liability terminate the Agreement by giving not less than 30 working days' written notice to the other Party.

14. VARIATION

- 14.1. Subject to Clauses 14.2, through 14.5 any variation to the Agreement shall be agreed by the Parties in writing.
- 14.2. If You request and the Service Provider agrees to a change of Service (including without limitation adding, deleting or exchanging a Service) or a change of Site, You must complete such formalities as the Service Provider shall require giving effect to such change. The Service Provider may require payment prior to effecting such change and to reflect such change the Service Provider may revise the Charges.
- 14.3. Upon prior written notice to You, the Service Provider may vary the Service from time to time, provided that the New Service will have at least equivalent functionality to the original Service. After a variation in accordance with this Clause the New Service shall be deemed the Service.
- 14.4. The Service Provider may at any time improve, modify or otherwise alter the Service in the event that:
 - 14.4.1. the Service Provider suppliers' services are altered so as to affect the provision by the Service Provider of the Service;
 - 14.4.2. in the reasonable opinion of the Service Provider the Service should be altered for reasons of quality of service or otherwise for the benefit of the Service Provider's customers as a whole;
 - 14.4.3. technical or regulatory reasons so require.
- 14.5. Any variation to the Agreement pursuant to Clauses 14.3 and 14.4 shall not be subject to the terms of Clause 14.2.

15. NOTICES

- Unless otherwise stated in the Agreement:
- 15.1. Notices sent by You to the Service Provider shall be sent by hand or post to the Commercial Director at the address below or as otherwise notified to You.
Elitele.com t/a Elite Group, Dawson House, Matrix Business Park, Chorley, PR7 7NA
 - 15.2. Notices sent by the Service Provider to You may be sent:
 - 15.2.1. by hand or by post to Your billing address specified on the Order Form or to Your registered office; or
 - 15.2.2. by electronic mail to Your electronic mail address specified on the Order Form or as otherwise notified to the Service Provider in writing.
 - 15.3. Notice given by hand shall be deemed given the same day. Notice given by post shall be deemed to have been given three (3) days after the date of posting. Any communication by electronic mail shall be deemed to have been made on the working day on which the notice is first stored in the other Party's electronic mail-box.
 - 15.4. You agree to inform the Service Provider of any change to Your billing address, registered address and contact details in order that notices are able to be sent correctly by the Service Provider.

16. ENTIRE AGREEMENT

- 16.1. This Agreement sets out the entire agreement and understanding between the parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the date of this Agreement by, or on behalf of, the parties and relating to its subject matter.
- 16.2. Each party confirms that it has not relied upon, and (subject to clause 16.4) shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any party (whether or not a party to this Agreement) unless that agreement, warranty, statement, representation, understanding or undertaking is expressly set out in this Agreement.
- 16.3. Subject to clause 16.4, neither party shall be entitled to claim the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Agreement.
- 16.4. Nothing in this Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

17. TIME NOT OF THE ESSENCE

- 17.1. Any dates quoted by the Service Provider in connection with the provision of the Service shall be treated as estimates only. The Service Provider accepts no liability for failure to meet such dates.

18. MISCELLANEOUS

- 18.1. No waiver by the Service Provider of any default by You under the Agreement shall operate or be construed as a waiver by the Service Provider of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by the Service Provider to You shall imply a waiver of its rights or shall in any way release, discharge or otherwise affect Your liability under the Agreement.
- 18.2. If any provision of the Agreement shall be prohibited or adjudged by a court of competent jurisdiction to be unlawful, void or unenforceable, such provision shall to the extent required be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement and shall not in any way affect any other circumstances or the validity or enforcement of the Agreement.
- 18.3. The provisions of the Agreement of a continuing nature shall survive termination of the Agreement for any reason whatsoever.
- 18.4. During this Agreement and for a period of twelve (12) months following the termination of the Agreement (for whatever reason) You shall not employ or engage directly or indirectly (without the prior written agreement of the Service Provider) nor make or seek to make any offer of employment or engagement to any employee of the Service Provider, who have dealt with You in the course of the performance of the Agreement.
- 18.5. You agree that the clauses detailed in Schedule 1 of these Standard Terms and Conditions shall govern the processing of Personal Data of Data Subjects in the context of the Services.
- 18.6. Right to Audit. You may request an audit of the Service Provider to conduct financial, quality, or other compliance audits in order to ensure Your compliance with Your own applicable standards. Such an audit will be conducted at Your own cost. The Service Provider agrees to undertake any such reasonable request, and use its reasonable efforts to facilitate, upon written notice of at least 20 business days to either complete an audit questionnaire, a due diligence questionnaire or any other such audit documentation or during regular business hours, access and conduct an inspection of the records and documentation of the Service Provider and any facilities and/or systems necessary. You must provide a detailed scope of the audit to the Service Provider in order for us to quantify the number of hours required to complete the work and the technical level of personnel necessary. The Service Provider will provide a quote for the number of consultancy hours and on acceptance by You of that quote the Service Provider will schedule the audit on an appropriate date agreed by both parties.

19. CONFIDENTIALITY

- 19.1. Each Party (in this Clause "Receiving Party") undertakes to the other Party ("Disclosing Party"):
 - 19.1.1. To keep confidential the Disclosing Party's information of a confidential nature obtained from the Disclosing Party in discussions leading to the Agreement and subsequently received pursuant to this Agreement ("in this Clause "Confidential Information"); and
 - 19.1.2. Not to disclose the Confidential Information in whole or in part to any other person without the Disclosing Party's written consent, except to the Receiving Party's employees, agents and sub-contractors involved in the supply or use of the Services (as the case may be) on a confidential and need-to-know basis; and

- 19.1.3. To use the Confidential Information solely in connection with the supply or use of the Services (as the case may be) and not for its own or the benefit of any third party.

- 19.2. You shall not disclose the existence of this Agreement to any third party without the prior written consent of the Service Provider.
- 19.3. The confidentiality obligations in Clauses 19.1 and 19.2 will not apply if the Receiving Party is required by court, government or other regulatory body to disclose the Confidential Information, but only to the extent required by law, provided that the Receiving Party gives the Disclosing Party written notice as soon as practicable of such requirement.
- 19.4. The confidentiality obligations in Clauses 19.1 and 19.2 will not extend to the Confidential Information which the Receiving Party can prove to the Disclosing Party's reasonable satisfaction:
 - 19.4.1. has ceased to be secret without default of the Receiving Party's part; or
 - 19.4.2. was already in the Receiving Party's possession prior to disclosure by the Disclosing Party; or
 - 19.4.3. has been received from a third party who did not acquire it in confidence. Clause 19 shall survive termination of the Agreement or any part of it.

20. ANTI-BRIBERY

- 20.1. You must not violate any Applicable Anti-Bribery Law.
- 20.2. You have and must at all times implement adequate procedures designed to prevent You or any Associated Person from engaging in any activity which would constitute an offence under the Bribery Act if it were carried out in the UK, or violate any Applicable Anti-Bribery Law.
- 20.3. You represent that, in connection with this Agreement, no improper financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by the Service Provider or any third party) by or on behalf of You or Your Associated Persons.
- 20.4. Breach of any of the provisions in this condition 26 or of any Applicable Anti-Bribery Law is a material breach of this Agreement and, without prejudice to any other right, relief or remedy, entitles the Service Provider to terminate this Agreement immediately.

21. ANTI-FACILITATION OF TAX EVASION

- 21.1. You shall, and shall procure that persons associated with it in connection with this Agreement shall:
 - 21.1.1. not, when acting in the capacity of a person associated with the Service Provider, engage in any act or omission which would constitute a UK tax evasion facilitation offence or a foreign tax evasion facilitation offence as those terms are defined in Part 3 of the Criminal Finances Act 2017;
 - 21.1.2. not cause, facilitate or contribute to the commission by the Service Provider of an offence of failing to prevent the facilitation of tax evasion under section 45 or 46 of the Criminal Finances Act 2017 or any other legal and regulatory anti-facilitation of tax evasion obligations ("Relevant AFTE Requirements");
 - 21.1.3. comply with the Your policy dealing with anti-facilitation of tax evasion and any relevant industry code concerning anti-facilitation of tax evasion in each case as updated from time to time ("Relevant AFTE Policies").
- 21.2. Breach of this Clause 21 shall be deemed a material breach of this Agreement, and, without prejudice to any other right, relief or remedy, entitles the Service Provider to terminate this Agreement immediately.
- 21.3. For the purposes of this Clause 21, the question of whether a person is associated with another person shall be determined in accordance with section 44 of the Criminal Finances Act 2017 (and any guidance issued under section 47 of that Act) and a person associated with You includes but is not limited to any subcontractor.

22. MODERN SLAVERY ACT

- You warrant and represent that You have complied with and throughout the Term will continue to comply with:
- 22.1. Your obligation under Section 54 of the Modern Slavery Act 2015, if applicable, to produce for each financial year an annual slavery and human trafficking statement setting out the steps You have taken during that year to ensure that slavery or human trafficking is not taking place in any part of Your own business and in any of its supply chains; and
 - 22.2. any applicable policy of the Service Provider in place from time to time relating to the prevention of slavery, servitude, forced or compulsory labour, human trafficking or to any human rights matters.

23. THIRD PARTY RIGHTS

- 23.1. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("CRTPA") to enforce any terms of this Agreement. This clause does not affect any right or remedy of any person which exists, or is available, other than pursuant to CRTPA.

24. COUNTERPARTS

- 24.1. This Agreement may be Signed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 24.2. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

25. GOVERNING LAW AND ARBITRATION

- 25.1. The Agreement shall be governed by and construed in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English Courts.

Schedule 1 – GDPR compliant data protection clause

BACKGROUND

- A. The Service Provider and You have entered into Agreement(s) (as defined below) which involve the processing of Personal Data (as defined below) of Data Subjects (as defined below) and such processing is subject to Data Protection Laws (as defined below).
- B. This data Clause shall govern the processing of Personal Data of Data Subjects in the context of the Services (as defined below).
- C. The terms set out below supersede and replace any existing privacy and data protection terms contained in the Agreement(s) pertaining to the processing of Personal Data and shall be amended to that extent. If there is any conflict between the provisions of this schedule and the data protection terms contained in the Agreements, the provisions of this schedule shall take precedence. Silence on any particular matter shall be deemed not to give rise to a conflict.
- D. Within this Clause, "Act" means the Data Protection Laws.
- The Service Provider will only store, copy or use Your Data to the extent necessary to perform the Service Provider's obligations under the Agreement.
 - The Service Provider will follow archiving procedures for Your Data as set out in the Service Provider's Data Handling Policy.
 - In the event that Your Data is corrupted or lost or degraded so as to be unusable, as a result of the Service Provider or its Personnel, subject to clause 11 of the Standard Terms and Conditions, Your sole and exclusive remedy will be for the Service Provider to use reasonable commercial endeavors to restore or procure the restoration of Your Data that is corrupted, lost or degraded so as to be useable as soon as reasonably practicable from the latest back-up of Your Data maintained by the Service Provider in accordance with the archiving procedure described in its Data Handling Policy.
 - The Service Provider will not be responsible for any loss, corruption, damage, alteration or disclosure of Your Data caused by any third party (except its Personnel which are engaged by the Service Provider to perform services related to Your Data).
 - The Service Provider will in performing its obligations under the Agreement, comply with its Data Handling Policy, which includes details of its compliance with ISO 27001.
 - In respect of any Personal Data that the Service Provider Processes on Your behalf when performing its obligations under the Agreement, You and the Service Provider hereby agree that You will be the Data Controller and the Service Provider will be a Data Processor and in any such case:
 - The Service Provider will Process the Personal Data solely on Your documented instructions (including as set out in the Agreement), for the purposes of providing the Services.
 - The Service Provider will take all measures required by Article 32 of the GDPR (or other equivalent provisions of the Data Protection Laws) to ensure the security of the Personal Data.
 - The Service Provider will take reasonable steps to ensure the reliability of its Personnel who may have access to the Personal Data, and their treatment of the Personal Data as Confidential Information.
 - The Service Provider will promptly, and in any case within five (5) Business Days, notify You of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from a Regulatory Body) of which the Service Provider is aware, relating to either party's obligations under the Data Protection Laws in respect of the Personal Data;
 - The Service Provider will notify You without undue delay upon becoming aware of any Personal Data Breach;
 - The Service Provider will provide commercially reasonable assistance to You on request in relation to (i) any communication received under clause 6.4 and (ii) any Personal Data Breach, including by implementing appropriate technical and organisational measures;
 - You acknowledge and agree that the Service Provider is generally authorized to appoint third parties to Process the Personal Data ("Sub-Processor"), subject to notifying You about its Sub-Processors and otherwise meeting the conditions set out in Article 28 (2) and (4) of the GDPR (or other equivalent provisions of the Data Protection Laws);
 - You acknowledge and agree that the Personal Data may be transferred or stored outside the European Economic Area or the country where You are located in order to carry out the Services and the Service Provider's other obligations under the Agreement. The Service Provider will take such steps as are necessary to ensure the Processing is in accordance with Data Protection Laws;
 - The Service Provider will provide You, upon request, with all information reasonably required to demonstrate compliance with its obligations under this clause 6.9, including permitting you, on reasonable prior notice, and no more than on one occasion in any twenty-four (24) month period (except in the event of a Personal Data Breach), to inspect and audit the facilities used by the Service Provider to Process the Personal Data;
 - The Service Provider will cease Processing the Personal Data upon the termination or expiry of the Agreement and, upon Your request, either return to You (in accordance with clause 9 below) or securely delete the Personal Data;
 - You will ensure that You are entitled to transfer the relevant Personal Data to the Service Provider so that the Service Provider may use, Process and transfer the Personal Data in accordance with the Agreement and Applicable Law, on Your behalf; and
 - You will ensure that all relevant Data Subjects have been informed of, and, where required, have given their consent to, such use, Processing, and transfer as required by all applicable Data Protection Laws.
7. The following table describes the Personal Data Processing activities performed by the Service Provider (in so far as the Service Provider is a Data Processor) on Your behalf.

Subject matter of processing	Processing of Personal Data and the Services provided under this Agreement.
Duration of processing	For the duration of the Minimum Period and any subsequent Renewal Term
Purpose of processing	Data processing shall only take place which is necessary to the performance of the contract between You and the Service Provider including to provision and install the Services, to provide support and maintenance for the lifetime of those Services, to support and host Personal Data for a cloud based software solutions where that Service is supplied and to provide billing services, including service charge itemization which may contain Personal Data.
Type of personal data	Names, contact details, addresses, service details specific to a Data Subject such as a mobile number.
Categories of data subjects	Your employees, workers and contractors.

- You acknowledge and agree that the Service Provider may from time to time monitor Your use of the Services and capture Your Data in relation to Your use of the Services, including through the use of Google Analytics;
- If on termination of the Agreement You require the Service Provider to return Your Data to You (including Your Data that resides on or within the Service Providers Software or the Service Providers systems), You will notify the Service Provider in writing and the Service Provider will use reasonable commercial endeavours to deliver to You, to the extent the Service Provider is able, the then most recent back-up of Your Data that is in the possession of the Service Provider, subject to You having paid all Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) and You and the Service Provider agreeing the reimbursement of the Service Provider's costs and reasonable expenses in relation to the retrieval and return of Your Data.

APPENDIX 1

The Service Provider aims to provide the highest level of support to You and to facilitate this we need to have direct access to Your systems (servers, storage or network infrastructure). This Appendix provides the technical requirements for delivering such facilities.

Hardware Requirements:

- Dial up connection to server over PSTN / ISDN (RAS)
- Dial up connection to LAN attached PC over ISDN (PCA)
- LAN to LAN connection over an Internet VPN (VPN) or Remote Management Software

The Service Provider can provide the required hardware and software as specified above.

Security:

The Service Provider will take every reasonable precaution to ensure the security of Your system, however the Service Provider cannot be held responsible for any breach of Your network security by any third party.