

FRAMEWORK AGREEMENT TERMS AND CONDITIONS

PARTIES:

ACCESS UK LIMITED (registration no. 2343760) whose principal place of business is at The Old School, Stratford St Mary, Colchester CO7 6LZ (“We”, “Us”, or “Our”); **AND**

CUSTOMER NAME as set out on the applicable (attached) Statements of Work

each a “party” and collectively the “parties”.

BACKGROUND:

- (A) We are a provider of software (including software as a service) technical support and other related services.
- (B) You wish to be provided with software, technical support, and potentially IT consulting services.
- (C) The parties have agreed that the terms and conditions set out in this Agreement will apply to the supply of the Software, Technical Support and other IT Consulting Services (as the case may be) by Us to You, as indicated in a Statement of Work.
- (D) The Services to be carried out are on a time and materials basis

SIGNED BY:

Signed on behalf of CUSTOMER	Signed on behalf of Access UK Limited
Signature	Signature
Print name	Print name
Title	Title
Date	Date

IT IS AGREED AS FOLLOWS:

DEFINITIONS AND INTERPRETATIONS

In this Agreement (including the Statements of Work and Annexes) the following expressions shall have the following meanings:

Access Software	means software components or modules of the Software that are owned by Us and made available under this Agreement either on premise or in the cloud and specified in the applicable Statements of Work;
aCloud Success Plans	means any aCloud Support service that is specified in the Statement of Work.
Agreement	means this framework agreement inclusive of the Statements of Work (and their annexes);
Annex	means an annex to a Statement of Work setting out the details of the Software and/or Service provided and any additional terms;
Annual Licence Fee	means the fee payable for the Licence in each 12 month period, as set out in clause 4 and relevant Statement of Work (as may be amended from time to time in accordance with clause 4.3);
APS	Access Payroll Services
Business Days	means Monday to Friday excluding Bank holidays and public holidays in England;
Business Hours	means the hours of 0900 to 1700 (BST or GMT as applicable) on Business Days;
Cancellation Charge	means any cancellation charges set out in clause 4.5;
Configured Software	means software code changes and additions to Software specifically developed or modified or written by Us for You.
Consulting Services	means the consultancy services specified in an applicable Statement of Work and may include, but not be limited to, implementation, configuration, integration and or general IT consultancy services;
Customer System	means Your computer equipment, operating system, computer network infrastructure hardware and associated telecom links and networks;
Documentation	means documents or on-line help (provided in any media) relating to the Software;
Effective Date	means the date of this Agreement;
Event of Insolvency	means the situation in which a party becomes insolvent, has an insolvency practitioner appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution for it to be wound up (otherwise than in the furtherance of a scheme for solvent amalgamation or reconstruction), or an analogous event occurs in respect of a party in any jurisdiction to which that party is subject;
Fees	means the Initial Licence Fee, Annual Licence Fee, Support Fees, SaaS Fee, and fees for Services or any of them and any other fees, charges costs and expenses paid or payable under this Agreement by You;
Hosting Services	means the deployment set out in the relevant Statement of Work;
Initial Licence	means the permission granted to the Licensee to hold the Software only but not access or Use the Software;
Initial Licence Fee	means the fee for the Initial Licence as set out in clause 2.1 and relevant Statement of Work;
Intellectual Property Rights	means all intellectual and industrial property rights, including patents, trademarks, logos, brand, company names, rights in databases, rights in designs, inventions, discoveries, know-how and copyrights (including rights in computer software) (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;
Licence	means the permission granted to the Licensee to Use the Software on the terms of this Agreement during the period for which the Annual Licence Fee has been paid;
Licence Term	means the total period for which You hold a valid Licence;
Licensee	means You and/or the Permitted Users;
Permitted Users	means the permitted users of the Software (as set out in the Statement of Work);
Personal Data	has the meaning given in the Data Protection Act;
Service Location	means the location(s) where the Services will be provided (as set out in the Statement of Work);
Services	means the Technical Support, Consulting Services, Hosting Services, Managed Services and Hardware Support to be provided by Us and as set out in Statements of Work;

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Software	means Access Software, Configured Software and Third Party Software specified in an applicable Statement of Work but, for the avoidance of any doubt, not including SaaS;
Specification	means each specification for the Software and/or SaaS as set out in the relevant Documentation and/or the Statement of Work;
Statement(s) of Work	means each statement of work specifying the Software, SaaS and/or Services to be supplied under this Agreement (together with any Annex), which forms part of this Agreement and shall be attached to it;
Support Fee	means the fee for the Technical Support as set out in a relevant Statement of Work. Or in the case of aCloud Success Plans the aCloud Success Plan Fee;
Technical Support	means technical operating support in relation to the operation of the Software and/or use of the SaaS;
Term	36 months minimum term thereafter the Agreement rolls on for a period of 12 months;
Third Party Software	means software that is owned by a party other than either You or Us which may be supplied under this Agreement as specified in a Statement of Work;
Transfer Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any successor legislation;
Use	means the restricted use of and access to the Software by the Permitted Users (unless otherwise agreed in writing by Us) in object code form by storing, accessing, running and/or loading the Software on the Customer Systems to process instructions in the Software as agreed between the parties and the Documentation;
Warranty Period	means the applicable warranty period for the Software, SaaS and/or Services being 180 days from the start of the Initial Licence, SaaS provision or the Services, as the case may be, unless otherwise as set out in an applicable Statement of Work.

1 TERM AND STATEMENT OF WORK

- 1.1 This agreement is for a minimum term of 36 months and thereafter will roll on for 12 month periods unless terminated in accordance with clause 7.
- 1.2 This agreement is a framework agreement, the terms of which are to be incorporated into any number of Statements of Work and Schedules which are, or may be, attached. Each Statement of Work constitutes a separate agreement on the terms of this framework agreement. Termination of any one Statement of Work shall not affect termination of any other Statement of Work (although this shall not prevent more than one Statement of Work being subject to termination if termination circumstances apply to them). The framework agreement shall subsist for as long as at least one Statement of Work subsists. The limitations of liability in clause 8 cover this Agreement including all the Statements of Work in aggregate.
- 1.3 Each Statement of Work, together with any Annexes will form a separate and independent contract for the applicable transaction between us and will commence on the date on which it is signed by both parties.
- 1.4 For the supply of any further Software and/or Services the parties shall agree new Statements of Work. All Statements of Work are automatically made on the terms of this Agreement together with any specifically agreed terms set out in the Statement of Work.
- 1.5 If there is any conflict or inconsistency between any provision of this framework agreement and any Statement of Work the terms of the framework agreement shall prevail unless specifically stated in writing in a Statement of Work with reference to this clause.
- 1.6 Except as set out in this Agreement, all dates, timescales and Consulting Services are estimates only and this is a time and materials contract. Furthermore, failure to meet a specified date will not result in a breach of contract by Us due to the collaborative nature of the project.

2 SOFTWARE

- 2.1 In consideration of and conditional upon the payment of the Initial Licence Fee to Us, We grant the Licensee a non-exclusive, revocable, non-transferable Initial Licence which shall commence on the date of installation of the Software and shall continue for the Licence Term.
- 2.2 In consideration of, and conditional upon, the payment of the Annual Licence Fee to Us, We grant the Licensee a non-exclusive, revocable, non-transferable Licence to Use the Software for the period of twelve (12) months from the Effective Date on the terms of this Agreement. Thereafter, the Licence shall automatically renew for further periods of 12 months subject to payment of the Annual Licence Fee in respect of each further 12 month period. The Software may not be Used unless the Annual Licence Fee is paid in full.
- 2.3 The Licence rights are granted to You, as identified by Your Companies House registration number, or other unique identifier, where applicable, and the Licence to use will transfer with You should Your ownership change, provided that the Company registration number does not change.
- 2.4 The Software is licensed for Use to the Permitted Users as set out in the applicable Statement of Work. Should You wish to increase the Permitted Users, You shall be entitled to do so, subject to You paying an additional Initial Licence Fee and associated Annual Licence Fee.
- 2.5 The Licensee can Use the Software to create and service up to five (5) databases (including any databases used exclusively for training, testing or disaster recovery). The Licence can be extended to service additional databases if You purchase additional Licence components from Us as agreed in a Statement of Work.
- 2.6 Unless explicitly stated otherwise in an applicable Statement of Work, the Licence covers the Use of the Software where the database(s) reside on a single SQL server instance only. Use of the Software is limited to the processing of Your/ Licensee's own data. For the avoidance of any doubt, You are not permitted to provide services to third parties using the Services or the Software.

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- 2.7 Unless explicitly stated otherwise in an applicable Statement of Work, You shall be responsible for ensuring that Permitted Users are properly trained to operate the Customer System on which the Software resides. Unless otherwise specified within the Licence (or requirements document when Configured Software has been supplied) the Software will be deemed as accepted by You unless You notify Us otherwise within thirty (30) days of installation or supply of the initial activation keys. No right is given for the Licensee to Use the Software commercially unless You have acknowledged acceptance. If the Software is put to commercial use or operation by the Licensee, whether or not acceptance has been acknowledged, the acceptance will be deemed to have occurred on the first date of such use.
- 2.8 You shall protect and keep confidential all passwords and credentials and shall be responsible for all use of the Software and/or Services that occurs under your passwords and credentials whether or not such use was by You, on Your behalf or authorised by You. You shall indemnify Us and hold Us harmless against any costs, losses, expenses or damages that We suffer or incur as a result of any breach of this clause or any misuse of any of Your passwords or credentials, including, but not limited to, any third party costs (e.g. hosting costs).
- 2.9 You are required to purchase Technical Support from Us for the entire duration of the Licence Term. We reserve the right to embed technology within the Software to automatically time expire the Software if the relevant Annual Licence Fee is not paid by You. The Software comprises of computer software application(s), which in turn may include a number of elements, (modules and users). This Licence is deemed to cover the applications and elements that We invoice to You. Future purchases of additional elements and/or applications that are invoiced will be included within this Licence upon payment of the invoice, and the inclusion of these elements and/or applications within the Technical Support. In the event that the Technical Support is suspended or terminated for any reason the Licence may continue subject to Our prior written consent but where such termination is as a result of Your default, any charges paid or payable for the Technical Support shall not be refunded where paid and shall continue to be payable where not yet paid.
- 2.10 You acknowledge that the Third Party Software and Access Software, and associated Documentation, are provided on an "as is" basis and have not been prepared to meet Your individual requirements and that it is Your responsibility to ensure the facilities and functions described in the documentation and any applicable Specification meet Your requirements.
- 2.11 Except to the extent such actions cannot be lawfully prevented, You shall not (nor permit any third party to) disassemble, decompile, modify, adapt, reverse engineer, merge or make error corrections to the Software, in whole or in part, or in any way expose the source code, instruction sequences, internal logic, protocols, or algorithms of the Software. Where You are taking Software on a SaaS basis, You may access it only through published interfaces and APIs using authorised logins. Nothing in this clause shall prevent You from configuring interfaces and other elements in Software which are intended to be configured by You.
- 2.12 You acknowledge that You have no right to have any access to the Software in source code form, or in unlocked coding of any kind. You agree that You must not attempt in any way to (nor permit any third party to) remove or circumvent any security devices present within the Software which are intended to protect the facility and integrity of the Software and You agree not to use any systems, processes or software in connection with the Software which are intended to circumvent such protections. You have no right to perform penetration testing on any of Our systems of Software without our prior written consent which will be subject to a specific penetration test access agreement.
- 2.13 You shall permit Us to have access upon reasonable written notice during the Licence Term to inspect during Business Hours the premises and the Customer System at or on which the Software is being kept or used, and any records kept pursuant to the Licence, for the purposes of ensuring that You are complying with the terms of this Agreement. In the event that You have unauthorised copies of the Software, without prejudice to any other rights or remedies that We may have, You shall pay an additional fee to Us in respect of any such unauthorised copies calculated by reference to the standard list price prevailing at the date of invoice in respect of such Software.
- 2.14 We shall provide You with upgrades relating to the Software and Services for which you are validly licensed for free of charge and within a reasonable period of time following such request. Services relating to the installation of such upgrades are normally subject to charge. Subject to payment of the relevant Support Fee, We shall provide Technical Support in respect of the version of the Software used by You from time to time in accordance with the terms set out of this Agreement.
- 2.15 Where Third Party Software is provided under this Agreement, We shall provide such software to You under the software licence terms provided by the third party licensor of such software.
- 2.16 Where Configured Software is provided under this Agreement, this will be provided subject to the terms agreed in a relevant Statement of Work and in accordance with the requirements as specified in the specifications agreed between the parties following scoping workshops and the production of the Confirmation of Requirements (where applicable). If agreed between the parties in the Statement of Work, You may enter into Our standard escrow agreement with NCC in connection with the Configured Software.
- 2.17 We shall use reasonable endeavours in accordance with good industry practice to prevent the introduction of known computer viruses or other program code which is likely to damage the Software or the Customer System. You will use reasonable endeavours in accordance with good industry practice to prevent the introduction of any known computer viruses into the Customer System and will check each release of the Software with the same diligence as would be expected from an organisation similar to You using current virus scanning software from time to time.

SOFTWARE PERFORMANCE

- 2.18 We warrant that during the Warranty Period the Software will, when used in accordance with the Documentation, operate in all material respects in accordance with the Documentation and Specification (where applicable). We will obtain and at all times during the term of the Agreement maintain all necessary licences and consents, and comply with all applicable laws and regulations relating to the Software. For the avoidance of doubt, We do not warrant that the operation of the Software will be uninterrupted or error free.
- 2.19 If, within the relevant Warranty Period, You notify Us in writing of any defect or fault in the Software in consequence of which it fails to conform in a material way with the Documentation or Specification respectively and such defect or fault does not result from any of the events set out in clauses 2.21, 2.22 or 2.23, We shall, at Our option, repair or replace the Software (or any defective part thereof). Any replacement Software will be of the same or equivalent functionality. Fixes to Software will normally be provided within a new or later version. We shall not be required to fix any bug where that bug does not exist in a subsequent version of the Software which is made available to you under the same terms as the Software in

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- question. Specification and as such response times are subject to Your own IT systems specification and as such cannot be guaranteed or underwritten by Us.
- 2.20 Software response times are subject to Your own IT systems specification, and as such cannot be guaranteed or underwritten by Us. You are solely responsible for the Customer System, its suitability, compatibility with the Software and for ensuring that it fully meets Your business requirements. We are not a manufacturer of Customer System nor an expert in this area.
- 2.21 The warranty given under clause 2.18 does not cover, and We shall have no liability for, persistent or material defects or failures in the Software caused by:
- 2.21.1 any fault in the Customer System that prevents the Software working in or with the Customer System;
 - 2.21.2 the Licensee's failure to use the Software in accordance with the Documentation or terms specified in the Statement of Work;
 - 2.21.3 use of consumables which are described in the Statement of Work or which We have notified to You as being inappropriate for use with the Software;
 - 2.21.4 third party software or hardware which is not provided or approved by Us;
 - 2.21.5 any modification or alteration of or attachment to the Software or removal of the same, other than those made by Us or on Our behalf; or
 - 2.21.6 persistent refusal to allow Us access to the Software or relevant data for the purpose of Technical Support.
- 2.22 In addition to the provisions of clause 2.21 We shall have no liability or responsibility for:
- 2.22.1 support of the Customer System, other software and/or hardware, accessories, attachments, machines, systems or devices which are not supplied by Us;
 - 2.22.2 rectification of problems not directly associated with Software.
- 2.23 The provision of the warranty in clause 2.18 is further dependent on You having a current and valid fully paid up Licence including Technical Support for the Software or having paid all Fees up to date. The warranty does not cover minor errors that do not materially affect the functionality of the Software. This warranty applies to standard (non-customised) Software only and rectification of errors and corrections will only be made in relation to the standard version of the Software.
- 2.24 We shall have the right to charge You on a time and material basis at Our standard prevailing rates applicable at the date of invoice in respect of any repairs or replacements carried out or claims made by You which are shown to be caused by any of the events described by clauses 2.21, 2.22 or 2.23 above.

3 SERVICES

In the event that You elect to receive Services from Us, this clause 3 shall apply in respect of such Services specified in the applicable Statement of Work.

• **TECHNICAL SUPPORT**

- 3.1 Technical Support shall start on the Effective Date and continue during the Licence Term, subject to the payment of the relevant fee.
- 3.2 Technical Support is available on Our online service and via a remote computer connection, subject to You enabling the required connections (in each case We shall determine the most effective medium for efficient support);
- 3.3 If You use third party consultants not approved by Us to configure the Software, We will have the right to charge You for Our Consulting Services to fix the configuration issues caused by those third parties and/or terminate Technical Support.
- 3.4 For customers with an aCloud Success Plan, Technical Support will be delivered based on the level of aCloud Success Plan purchased. We will provide support services and service levels as specified in the aCloud Success Plan datasheet in effect at the start of your Effective Date. We reserve the rights to amend the Services specified within the aCloud Success Plan, but any such changes would only come into effect at the beginning of each renewal. The aCloud Success Plan datasheet is available at <https://cmc.theaccessgroup.com/support/acloud>
- 3.5 For non aCloud Success Plans Technical Support will be provided during Support Hours being Business Hours other than during the Christmas shutdown period (being the days between Christmas bank holidays and the New Year bank holidays when skeleton staff will be in operation) and up to three half days per year which are dedicated to special staff training events and which shall be notified to You on reasonable notice;
- 3.6 For non aCloud Success Plans we will provide Technical Support to Permitted Users who have undertaken training. You will appoint a representative with all the necessary authority to bind Your company and who shall consolidate the queries of Permitted Users and be the prime contact for Technical Support to ensure smooth communications.
- 3.7 Our obligation to provide the Technical Support shall not extend to:
- 3.7.1 rectification of lost or corrupted data arising by reason other than Our negligence;
 - 3.7.2 any supported Software which has been changed, altered, added to, modified or varied by anyone other than Us;
 - 3.7.3 attendance to faults caused by Your failure to use the supported Software or SaaS in accordance with the requirements of the Documentation and/or documentation or manuals supplied with the supported Software, or caused by operator error or omission;
 - 3.7.4 attendance to faults attributable to faults in the Customer System or its use or interaction with other software with which the Software is not compatible or its use or interaction with software or on equipment that We have not approved in writing.

• **CONSULTING SERVICES**

- 3.8 We will perform the Consulting Services specified in the applicable Statement of Work.

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- **ACCESS PAYROLL SERVICES**

- 3.9 Where We provide APS to You then if an employee alleges, or is held to have any rights or claims against Us pursuant to the Transfer Regulations, including in particular that their employment has, should or should have transferred to Us, whether or not they are an employee of You (a "Transferring Employee"), You shall be liable for and shall indemnify Us and hold Us harmless from and against the following, below. This indemnity also covers any such allegation, finding or claim made on behalf of a Transferring Employee by any representative:
- (a) all pay, salary, bonuses, commissions, benefits, holiday pay, employment benefit costs, contractual payments due (whether expressed or implied) statutory and/or contractual redundancy payments, protective awards, settlements, liability for wrongful and/or unfair dismissal and/or liability for discrimination awards claimed from and/or incurred by Us including all legal and professional fees incurred as a result of the claim or action. The sums referred to in this sub-paragraph (a) shall include any and all Losses relating directly or indirectly to the terms and conditions of employment, pensions and/or life assurance arrangements, health, welfare or any other matters concerning the Transferring Employee or any other claims which the Transferring Employee may have against You or any third party in respect of any period before the transfer of the employment of the Transferring Employee to Us; and
 - (b) all claims or liabilities arising out of any breach by You, Us or any third party of the Transfer Regulations in respect of any Transferring Employee.

- **HOSTING / SAAS SERVICES**

- 3.10 We shall provide such Hosting/SaaS Services requested by You which are agreed in a Statement of Work.
- 3.11 We shall ensure that Our provision of the SaaS and Support and You shall ensure that Your use of the SaaS and Support complies in all respects with all applicable laws.
- 3.12 Personal Data will not be transferred or stored outside the EEA except with Your written permission.
- 3.13 Any Personal Data stored or transferred will be appropriately classified and protected through suitable encryption.
- 3.14 All servers used to provide the SaaS are subject to Our current back-up and recovery procedures. Sufficient hardware is available to ensure continuity of service in event of total server failure with a target recovery time of 12 hours for any given server. Backup policy and retention is all backups are stored on disk within a multi tenancy data vault at our DR Datacentre and encrypted.

EXIT PLAN

- 3.15 After termination of this Framework Agreement or a Statement of Work We will maintain Your historic data for a mutually agreed time.
- 3.16 We will assist and cooperate with You in a timely fashion to provide a data export in an acceptable format ie Excel, this will be subject to a reasonable charge to be agreed in advance with You.
- 3.17 We will assist You and/or your nominated alternative provider in migrating the Customer Data at the relevant time in the format and on the media reasonably specified, this may be subject to a reasonable charge to be agreed in advance with you.

3.18 **Service Level Provisions**

(a) **Service Level Targets**

We will use all reasonable efforts to ensure that the Hosting Service is available for 99.70% of each calendar month. The Service will be deemed unavailable if it cannot be reached from a functioning Internet Connection. Any instances of unavailability shall have to be ratified by Our monitoring system.

(b) The Hosting Service shall not be deemed unavailable (without limitation) in the event of any of the following:

- Periods of scheduled maintenance;
- Failure by You or End User connection to the Network (e.g. via the public internet or your own network, or any 3rd party telecommunications tail circuits);
- Malfunction of yours or End User's own computing systems;

(c) Recovery Point Objective RPO is the maximum time period in which data might be lost, for SQL Server this is 12 hours, for a Single Virtual Machine this is 12 hours, for a Complete Primary Datacentre Outage this is also 12 hours.

(d) Recovery Time Objective RTO is the duration of working time within which Service should be restored after a disaster. This time starts from when a support call is logged with Us, for SQL Server this is 6 hours, for a Single Virtual Machine is 6 hours, for a Complete Datacentre Outage it is 12 hours.

(e) **Service Level Credits**

If We fail to achieve the Service Level Target, and if You request Us to do so within twenty (20) Business Days after the target is not met, We will issue to You service credits against future periods of service as detailed in the adjacent table.

(f) Service credits issued shall not survive termination of the contract for the Service and are not applicable against other services.

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Deployment Option	Service Level Target	Service Credit
Shared Hosting	99.70%	1 hour subscription per hour of downtime (after 2 hours)*
Partial Hosting	99.70%	Half day subscription per 1 hour of downtime (after 2 hours)*
Isolated Hosting	99.70%	1 day subscription per 1 hour of downtime (after 2 hours)*

*Hour of downtime = hour or part thereof.

Subscription credits are calculated by dividing the annual charge by the number of days in the given year, divided by 24 hours.

1 hour of subscription would typically be worked out by dividing the annual charge by 8731 (365 days x 24 hours x 99.7% minus 2 hours)

Half day subscription is calculated as the annual charge divided by 8731, multiplied by 12 hours.

1 day subscription is calculated as the annual charge divided by 8731, multiplied by 12 hours.

The maximum Service Credit available in any calendar month is equivalent to the annual charge divided by 12.

(g) You will comply with Our Acceptable Use Policy which is published on

Our website:- <http://www.theaccessgroup.com/media/463374/acceptable-use-policy.pdf>

GENERAL

- 3.19 We will perform all Services in accordance with good industry practices and will use appropriately skilled and qualified personnel.
- 3.20 You agree that We will be relying upon the accuracy of all representations, statements, information, materials and documents ("Data") supplied by You in connection with the Services and that We shall be under no obligation to test, check or confirm the accuracy of any Data prior to performing the Services unless set out in the Statement of Work. We accept no responsibility or liability whatsoever for or resulting from any Data prepared and/or supplied by You or a third party on Your behalf.
- 3.21 You shall:
- 3.21.1 provide, where applicable, access to the areas in which the Services are to be performed at the Service Location, including authorised access to the Customer Systems or systems licensed to You to enable Our staff and associates to perform the Services and so that We can ensure that You are complying with the terms of this Agreement;
 - 3.21.2 provide, free of charge, appropriately qualified and experienced personnel familiar with the Customer Systems, equipment, programmes and operations who shall reasonably co-operate with Our personnel to allow Us to fulfil Our obligations under this Agreement and each Statement of Work if We request this from You;
 - 3.21.3 make available, free of charge, such documentation, information, data and computer facilities (including but not limited to data preparation facilities, storage and computer consumables) as We may reasonably require in the fulfilment of Our obligations under this Agreement and each Statement of Work;
 - 3.21.4 appoint a representative with responsibility for all matters relating to this Agreement and each Statement of Work; this representative will be identified in the Statement of Work;
 - 3.21.5 ensure that the Customer Systems comply with the agreed specification as set out in the relevant Statement of Work;
 - 3.21.6 remain responsible for all actions and inactions of any third party provider directly in Your control or with whom You have a contractual relationship and with whom We will be or are reliant upon to fulfil Our obligations under this Agreement or a relevant Statement of Work;
- 3.22 Our ability to deliver the Services depends totally on Your full and timely cooperation, as well as the accuracy and completeness of any information that You provide. If You fail to do this You may be in material breach of this Agreement. You accept that the very nature of the project may necessitate disruption to Your staff and business processes in order to accommodate the implementation.

4 FEES AND PAYMENT

- 4.1 You agree to pay the Fees for the Software and Services without deduction or set off and in accordance with the terms specified in each Statement of Work. All Fees and other charges are exclusive of VAT which will be added at the appropriate rate.
- 4.2 You must pay the Initial Fee and the Annual Licence Fees prior to Using the Software and You shall pay any subsequent Annual Licence Fees in advance of the expiry of the current Licence. The Initial Fee and Annual Licence Fees are non-refundable.
- 4.3 We have the right to increase all Fees annually.

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- 4.4 We reserve the right to suspend the supply and/or access to the Software and/or Services to You where any amounts owed under this Agreement are overdue until all such amounts have been paid in full (together with any accrued interest). Interest shall be payable on overdue amounts at a rate of 4% per annum above the base rate of HSBC Plc from time to time from the due date for payment until We receive the full amount and shall accrue at such rate after as well as before any judgement.
- 4.5 In the event that You cancel or postpone the provision of SaaS or any Service(s) within five Business Days of the agreed start date then 100% of the Fees will be payable as a Cancellation Charge. If You cancel or postpone between six and nine Business Days of the agreed start date then 50% of the Fees will be payable as a Cancellation Charge. Notwithstanding the foregoing, you shall reimburse us in full for all costs and expenses that we suffer or incur if you cancel or postpone any Services prior to the agreed start date.
- 4.6 If We are delayed or impeded or obliged to spend additional time or incur additional expenses in the performance of any of Our obligations under this Agreement by reason of Your act or omission or that of Your employees, agents, contractors or subcontractors (including the provision by any such person of any incorrect or inadequate data, information or instructions) then, notwithstanding anything else contained in this Agreement or Statement of Work, You will pay Us, at our then current standard rates, for any additional time that We spend and any expenses that We reasonably incur in carrying out such obligations and which are caused or rendered necessary by such act or omission and any target time specified for the performance by Us of any of Our obligations shall be extended accordingly.
- 4.7 All rates detailed in the Statement of Works for Consulting Services are estimates only and exclude actual travel and accommodation expenses which will be charged as incurred in line with our standard terms which are available on our website (these terms may be updated from time to time). <http://www.theaccessgroup.com/privacy-and-legal/>
- 4.8 You are required to make payment via the UK Direct Debit payment system and will complete the Direct Debit mandate. You recognise and agree that by completing a Direct Debit Instruction We are authorised to debit the relevant fees, as set out in the Statement of Work, from Your nominated account.

5 DATA PROTECTION

- 5.1 For the purposes of this clause "personal data", "data subject", "data controller" and "data processor" shall have the meanings set out in the Data Protection Act 1998.
- 5.2 If We process any personal data on Your behalf when performing Our obligations under this Agreement, we each record our intention that You shall be the data controller and We shall be data processors and in any such case:
- 5.3 You shall ensure that You are entitled to transfer the relevant personal data to Us so that We may lawfully process the personal data in accordance with the Agreement on Your behalf.
- 5.4 We shall process the personal data only in accordance with the terms of the Agreement and any written instructions given by You from time to time. We shall keep a record of any processing of personal data;
- 5.5 We shall not do anything which We reasonably understand would cause You to be in breach of the Data Protection Act 1998;
- (a) We shall promptly comply with any request from You requiring Us to assist with the transfer of any personal data;
- (b) Should We receive a request, complaint, notice or communication which relates directly to the processing of your personal data We shall immediately notify You and provide you with such assistance as is required to enable You to comply and or respond to any such request, complaint, notice or communication
- (c) We shall not store or transfer any personal data outside the United Kingdom without Your prior written consent.
- (d) We shall ensure that access to any data including any personal data is limited to those employees who need access to the personal data to meet Our obligations under this Agreement or Statement of Work; and we hereby warrant that any such access by Our employees shall be strictly necessary for the performance of that employee's duties.
- (e) We shall take all reasonable steps to ensure the reliability of any of Our employees who are required to have access to the personal data held on Your behalf and We shall use Our best endeavours to ensure their compliance with the obligations set out in this clause.
- (f) We hereby confirm that all User Data shall be Your property. Nothing in this Agreement is intended to transfer any aspect of ownership in the End User Data to Us.
- (g) Any personal data stored or transferred will be appropriately classified and protected through suitable encryption.
- 5.6 We hereby warrant that:
- (i) We will process the personal data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments; and
- (ii) We will implement technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data to ensure Your compliance with the seventh data protection principle.
- 5.7 We shall notify You immediately on it becoming aware of any unauthorised or unlawful processing, loss of, damage to or destruction of any personal data.

6 INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP

- 6.1 You acknowledge that all Intellectual Property Rights (including any new Intellectual Property Rights) arising out of or in connection with the Software, Services and Documentation supplied belong at all times to Us or Our licensors.
- 6.2 Nothing in this Agreement shall transfer any Intellectual Property Rights in or arising from the Software, Services or Documentation to You but that these shall remain vested in Us or Our licensors, and no rights to use any such Intellectual Property Rights are granted, except as expressly stated

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in this Agreement or the relevant Statement of Work. If, notwithstanding this, any Intellectual Property Rights in or arising from the Software, Services and Documentation are acquired by You (including any new Intellectual Property Rights), You hereby assign (and to the extent that any such Intellectual Property Rights are not capable of such assignment, agree to hold on trust) and agree to do all such things and sign all such documents as We may reasonably require in respect of the assignment of all such Intellectual Property Rights to Us or Our licensors as may be appropriate.

- 6.3 You are permitted to make such copies of the Software as are reasonable required for the purposes of bona fide operational purposes, security and backup only and shall ensure that such copies are marked as proprietary to, copyright of, and licensed by, Us. No other copies may be made. You may not make any copies of the Documentation, manuals, or other documentation (including electronic documentation) other than for use by Permitted Users without Our written permission.
- 6.4 Subject to clauses 6.7 and 6.8, We will indemnify You against all direct costs, claims, demands, expenses (including reasonable legal costs) and liabilities of whatever nature incurred by or awarded against You arising out of or in connection with any claim that Your use of the Software, Services, any Documentation, information, data, computer facilities or material that We supply, or any provision of the Services, infringes a third party's copyright or UK registered patent (effective at the date of this Agreement) ("Infringement Claim").
- 6.5 We warrant that We are not aware that the Software, any Documentation, information, data, computer facilities or material that We supply, or any provision of the Services or Your use of the same in accordance with the terms of this Agreement will infringe any third party's Intellectual Property Rights but We have not carried out any investigation into the same. We shall indemnify You against all direct costs, claims, demands, expenses (including reasonable legal costs) and liabilities of whatever nature incurred by or awarded against You arising out of or in connection with any breach of the warranty contained in this clause 6.5.
- 6.6 If an Infringement Claim is alleged or threatened against either You or Us, or if We believe that the Software, Services or the Documentation or any part thereof may infringe any third party's copyright or UK registered patent (effective at the date of this Agreement), We may, at our sole option, (i) procure such licence, authorisation or consent as is necessary to enable Your continued use of the Software, SaaS and/or the Documentation; (ii) modify or replace the same as necessary to avoid infringement without any material adverse effect to the functionality of the Software; or (iii) terminate this Agreement and/or the affected Statement of Work and refund an amount equal to the unused portion of any Annual Licence Fees pre-paid in respect of such Software pre-paid (as the case may be) to You.
- 6.7 We shall only be liable under the terms of this Agreement for an Infringement Claim or alleged Infringement Claim if (i) You promptly notify Us of any infringement or alleged infringement of which You have notice; (ii) You make no admission as to liability or agree any settlement of such claim without Our prior written consent; (iii) You allow Us (or a relevant third party supplier), at Our expense, to conduct and/or settle all negotiations and litigation arising from any claim or action relating to the alleged infringement; and (iv) You, at Our expense, give Us (or a relevant third party supplier) such reasonable assistance as may be requested in such settlement or negotiation.
- 6.8 We shall have no liability for any Infringement Claim or alleged Infringement Claim to the extent such claim (i) arises from possession, use, development, modification, or operation of the Software (or part thereof) by You other than in accordance with the terms of this Agreement or the relevant Statement of Work; (ii) failure by You to take any corrective action directed by Us; or (iii) is based upon any item provided by You and incorporated into the Software at Your request.
- 6.9 You shall indemnify Us against all costs, claims, demands, expenses (including reasonable legal costs) and liabilities of whatever nature incurred by or awarded against Us arising out of or in connection with any claim that Our use of the Customer System pursuant to this Agreement infringes the Intellectual Property Rights of any third party.

7 TERMINATION AND SUSPENSION

- 7.1 If a party is in material breach of its obligations under this Agreement which is incapable of remedy or if capable of remedy, fails to remedy the same within 30 days (unless otherwise agreed between the parties acting reasonably) of written notice to do so by the other party, the other party may, without prejudice to its other rights and remedies and at its option terminate the Agreement or the affected Statement of Work as a whole, or any affected element of the Software or Services provided under it.
- 7.2 If a party is in material breach of its obligations under any Statement of Work which is incapable of remedy or if capable of remedy, fails to remedy the same within 30 days (unless otherwise agreed between the parties acting reasonably) of written notice to do so by the other party, the other party may, without prejudice to its other rights and remedies and at its option terminate the affected Statement of Work as a whole, or any affected element of the Software or Services provided under it.
- 7.3 Either party may terminate this Agreement with immediate effect on written notice if the other party is subject to an Event of Insolvency.
- 7.4 Either party may terminate the Annual Licence at the end of the term of the current Annual Licence by giving not less than 90 days' prior written notice to the other.
- 7.5 We may suspend and/or terminate the Technical Support immediately if You do not pay the Support Fees by the due dates. Suspension does not relieve you of any liability to pay the Fees.
- 7.6 The termination of this Agreement or any Statement of Work in whole or in part for whatever reason shall not affect any provision of this Agreement which is expressed, or by its nature, implied to continue, survive or come into force in the event of such termination.
- 7.7 Upon termination of this Agreement or any Statement of Work in whole or in part for any reason other than pursuant to clause 7.4:
- 7.7.1 the parties shall (without prejudice to any other rights and remedies) promptly pay to each other all sums which are due or outstanding in respect of part of the Agreement or Statement of Work that has been terminated; and
- 7.7.2 You shall cease all access and use of the Software and shall, at Our request, return or destroy as soon as reasonably practicable any copies of the Software subject to such termination; and
- 7.7.3 unless necessary in order that We may continue to perform Our obligations, We shall cease all access to the Customer Systems and shall promptly return all information, materials, documents and data in Our possession at the date of termination to You.

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8 LIMITATION OF LIABILITY

- 8.1 All warranties, conditions and other terms whether express or implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 8.2 Subject to clause 8.4, the total liability of either party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with this Agreement or any Statement of Work shall be limited to an amount equal to the Fees paid or payable to Us pursuant to the relevant Statement of Work under which the liability arose.
- 8.3 Subject to clause 8.4, neither party shall be liable for any misrepresentation (other than fraudulent misrepresentation), loss of profits, loss of business, depletion of goodwill and similar losses, loss of anticipated savings, loss of goods, loss of contract or loss of use (in each case whether direct or indirect) nor for any special, indirect or consequential loss or damage suffered by the other in connection with this Agreement. If We provide SaaS or Hosting Services to You under this Agreement our liability in connection with the loss or corruption of data or information is as set out in the applicable Annex, in all other cases We shall not be liable for any loss or corruption of data or information, whether direct or indirect.
- 8.4 Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury resulting from negligence; fraud; or any other liability which may not be properly limited or excluded under applicable law nor in respect of the indemnities given in clauses 6.4 or 6.5 nor Your obligation or liability to pay all and any of the Fees under this Agreement.

9 DISPUTES

- 9.1 This clause shall not apply to any unpaid Fees which, for the avoidance of any doubt, shall be deemed to be a material breach and shall be dealt with under clause 7.1 or 7.2 as applicable. If a dispute arises between You and Us in relation to any other matter the representatives for each of us in relation to the applicable Statement of Work shall, in the first instance attempt to agree a resolution for such dispute. If after 60 days (or such other time as the parties may agree in writing) such representatives, each acting reasonably, are unable to resolve the dispute each You and We shall arrange for a senior representative to attend one or more meetings solely in order to resolve the matter in dispute. Such meetings shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question.
- 9.2 If the senior representatives are unable to resolve the matter in question within 60 days (or such other time as the parties may agree in writing) then we will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed between us. To initiate a mediation either of us may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or agreed equivalent mediation organisation asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither of us will terminate such mediation until each of us has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter the Model Mediation Procedure will apply (or the equivalent paragraph of the other agreed model mediation procedure). Neither of us will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute. Each of us will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or, in the absence of such determination, such costs will be shared equally.

10 GENERAL

- 10.1 We may change these Terms and Conditions from time to time and will notify You of any changes by posting them on Our website or via Our newsletter or email. Any changes will be effective immediately upon such notice. If You use the Services/Software after notice of the changes to the Terms and Conditions, You will be taken to have agreed to the changes.
- 10.2 Each provision of this Agreement shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect. Each of us hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
- 10.3 We each confirm our intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the application of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement or a Statement of Work.
- 10.4 The construction, validity, and performance of this Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.
- 10.5 This Agreement constitutes the entire agreement between You and Us with respect to the subject matter of this Agreement and supersedes any and all prior agreements, statements, purchase orders, covenants, understandings, representations, warranties and undertakings, whether written or oral, made between us regarding such matters but not embodied in this Agreement, save that the foregoing shall not exclude any misrepresentation which was made fraudulently. You acknowledge and accept that in entering into this Agreement You have not relied on any pre-contractual statement.
- 10.6 Unless You have ticked the option to decline the use of the email information, then You consent to receiving email from Us relating to Us, Our software, services and business information. You may withdraw Your consent at any time by notifying Us in writing. We will cease to send such emails within 28 days of receipt of the notice.
- 10.7 You agree that We may refer to You as a client and as a user of Software as applicable in Our marketing and public relations materials.
- 10.8 If due performance of this Agreement by either party is affected in whole or in part by any reason or any event, delay or failure beyond the reasonable control of such party, such party shall give prompt notice to the other party and shall be under no liability for any loss, damage, injury, or expense of whatever kind, howsoever caused, suffered by the other party due to the affected performance. Such party shall use reasonable efforts to avoid or overcome the causes affecting performance as soon as it becomes practical to do so.

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- 10.9 Neither Party shall assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations under this Agreement, or purport to do so, or sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld provided that We may transfer or assign this Agreement to any successor in interest in the event of a sale or merger, such transfer or assignment to be effective upon written notice to You.
- 10.10 Any failure to exercise or delay by either of us in exercising a right or remedy arising in connection with this Agreement shall not constitute a waiver of such right or remedy or of any other rights or remedies.
- 10.11 Neither of us shall without the prior written consent of the other party (during and after termination of this Agreement) use (other than in the performance of this Agreement) or disclose to any other person any Confidential Information of the other party, except that any obligations contained in this clause shall not prevent any disclosure of Confidential Information which is required (though only to the extent required) by law, court order or any legal or regulatory authority, which is required to comply with the rules of any relevant stock exchange, or disclosure to a party's professional advisors, acting in their capacity as such.
- 10.12 Both parties shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements)
- Not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010
- Have and maintain throughout the term of the Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and enforce them where appropriate.
- 11 NOTICES**
- 11.1 Any document notice claim or demand to be given served or made by either party to the other in connection with this Agreement shall be sufficiently given served or made by delivering or sending the same by hand or courier, pre-paid first class recorded delivery, or email to the registered office or the aforesaid address of the party to whom it is addressed.

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