

Hosted Business Limited

IT Managed Services and Software Terms and Conditions

- 1 Interpretation

The definitions and rules of interpretation in this condition apply in these terms and conditions.
- 1.1 Definitions

Business Day A day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Confidential Information as defined in clause 11.1;

Contract the Customer's purchase order and Hosted's acceptance of it under condition 3 which includes the Service Plan and these conditions;

Customer the person, firm or company who purchases Services from Hosted;

Deliverables all products and materials developed by Hosted in relation to the Services in any media, including computer programs, data, diagrams, reports and specifications (including drafts);

Equipment the equipment agreed in the Contract to be purchased by the Customer from Hosted (including without limitation any part or parts of it).

Hosted Hosted Business Limited a company registered in England and Wales under number 10681571 whose registered office is at Ridown Building, Fulcrum 2, PO15 7FN;

Intellectual Property Rights patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Pre-existing Materials materials which existed before the commencement of the Services;

Service Plan the detailed plan describing the Services and setting out the estimated timetable and responsibilities of each of the parties for, or in connection with, the provision of the Services and where applicable the Equipment by Hosted in accordance with the Contract;

Services the services to be provided by Hosted under the Contract;

Software any third party software to be provided as part of the Services;

VAT value added tax chargeable under English law for the time being and any similar additional tax.

NCE Microsoft New Commerce Experience license and billing platform.

Tenant Microsoft tenant giving access to Office 365, Microsoft 365, Azure and Customer data.
- 1.2 Condition, Schedule and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to writing or written includes faxes but not email.
- 1.9 References to conditions and Schedules are to the conditions and Schedules of the Contract and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2 Application of conditions
- 2.1 These conditions shall:
 - 2.1.1 apply to and be incorporated in the Contract; and
 - 2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Hosted unless in writing and signed by a duly authorised representative of Hosted.
- 3 Orders
- 3.1 Any quotation is valid for a period of 5 days only, and Hosted may withdraw it at any time by notice to the Customer.
- 3.2 Each order or acceptance of a quotation for the supply of the Services and/or Software and/or Equipment by the Customer shall be deemed to be an offer by the Customer subject to these conditions. The Customer shall ensure that its order is complete and accurate.
- 3.3 A binding contract shall not come into existence between Hosted and the Customer unless and until Hosted issues a written order acknowledgement to the Customer, or Hosted delivers the Software and/or Services to the Customer (whichever occurs earlier)
- 3.4 No order which has been acknowledged by Hosted may be cancelled by the Customer, except with the agreement in writing of Hosted and provided that the Customer indemnifies Hosted in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Hosted as a result of cancellation.
- 3.5 All samples, drawings, descriptive matter, specifications and advertising issued by Hosted, and any descriptions or illustrations contained in Hosted's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.
- 3.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Hosted shall be subject to correction without any liability on the part of Hosted.
- 3.7 Hosted reserves the right (but does not assume the obligation) to make any changes in the specification of the Software and/or Equipment which are required to conform with any applicable legislation or, where the Software and/or Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 3.8 Hosted's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Services, Software and/or Equipment.
- 4 Hosted obligations
- 4.1 Hosted shall use reasonable endeavours to manage and complete the Services, and to deliver the Deliverables including any Software and/or Equipment to the Customer, in accordance in all material respects with the Service Plan.
- 4.2 Hosted shall use reasonable endeavours to meet the performance dates specified in the Service Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.3 Hosted will supply the Services with all due care and skill as would be expected of an expert IT service provider. Hosted will use individuals who are suitably qualified to provide the Services.
- 4.4 The Customer accepts that Hosted cannot guarantee that:
 - 4.4.1 the Services will be uninterrupted, secure or error-free;
 - 4.4.2 or any data generated, stored, transmitted or used via or in connection with the Services will be complete, accurate, secure, up to date, received or delivered correctly or at all.
- 5 Customer's obligations
- 5.1 The Customer shall:
 - 5.1.1 co-operate with Hosted in all matters relating to the Contract;
 - 5.1.2 provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by Hosted;
 - 5.1.3 provide in a timely manner such information as Hosted may request, and ensure that such information is accurate in all material respects; and
 - 5.1.4 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services, Software and/or Equipment.
- 5.2 Where the Customer is required as part of the Services to carry out acceptance testing as set out in the Service Plan this clause 5.2 shall apply. If the Customer does not complete the acceptance tests within 14 days of the date set out in the Service Plan or such other date notified by Hosted for carrying out the acceptance tests, acceptance of work will be deemed to have occurred and payment for such Services and/or Software will become due.
- 5.3 The renewal of any internet domain names or web hosting facility does not form part of the Services unless otherwise agreed in writing by Hosted. The Customer understands that it has full responsibility for the renewal of any internet domain names or web hosting facility unless otherwise agreed in writing by Hosted. Hosted cannot be held responsible for problems arising from reallocation of domain names or loss of internet presence unless Hosted has agreed to be responsible for such matters as part of the Services.
- 5.4 If Hosted's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, subcontractors or employees, the Customer shall in all circumstances be liable to pay to Hosted on demand all reasonable costs, charges or losses sustained or incurred by it, subject to Hosted confirming such costs, charges and losses to the Customer in writing. Such losses shall include, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.
- 5.5 The Customer shall not, without the prior written consent of Hosted, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from Hosted or employ or attempt to employ any person who is, or has been, engaged as an employee or

- subcontractor of Hosted. The Customer shall not be in breach of this condition 5.5 if it hires an employee or subcontractor of Hosted as a result of a recruitment campaign not specifically targeted to any employees or subcontractors of Hosted.
- 5.6 Any consent given by Hosted in accordance with condition 5.5 shall be subject to the Customer paying to Hosted on demand a sum equivalent to 20% of the then current annual remuneration of Hosted's employee or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or subcontractor.
- 6 Charges
- 6.1 All prices for the Software and/or Equipment shall be as stated in Hosted's acknowledgement of order. The price of the Software and/or Equipment shall be Hosted's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Hosted's price list current at the date of acceptance of the order.
- 6.2 Hosted reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Software and/or Equipment as has not been delivered to reflect any increase in the cost to Hosted which is due to market conditions or any factor beyond the control of Hosted (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Software and/or Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Hosted adequate information or instructions.
- 6.3 In relation to the supply of Services, condition 6.4 shall apply if the Services are to be provided on a time-and-materials basis and condition 6.5 and condition 6.6 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 6 shall apply in either case.
- 6.4 Where the Services are provided on a time-and-materials basis:
- 6.4.1 6.4.1 the charges payable for the Services shall be calculated in accordance with Hosted's standard daily fee rates as amended from time to time;
- 6.4.2 Hosted's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
- 6.4.3 Hosted shall be entitled to charge at an overtime rate of 1.5% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 6.4.2 on a pro-rata basis;
- 6.4.4 Hosted shall ensure that all members of the project team complete time sheets recording time spent on the Services, and Hosted shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 6.4.5; and
- 6.4.5 Hosted shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 6. Any expenses, materials and third party services shall be invoiced by Hosted at cost. Each invoice shall set out the time spent by each member of the project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 6.5 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Service Plan. The total price shall be paid to Hosted in instalments as set out in the Service Plan. Hosted shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 6.6.
- 6.6 Any fixed price contained in the Service Plan excludes:
- 6.6.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Hosted for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Hosted at cost; and
- 6.6.2 VAT, which Hosted shall add to its invoices at the appropriate rate.
- 6.6.3 Moving Premises If the customer moves premises during the contract term, a £275.00 administration fee will apply for processing the move. Where Hosted is unable to provide services at the new premises, the customer will be liable for a full early termination fee (ETF), calculated in accordance with the remaining contract term, which must be paid in full to end the contract.
- 6.6.4 IT Services – Email Removal or Migration For IT managed services, the removal of email accounts from Hosted servers or the migration of the customer's email domain to another provider will incur a £250.00 administration fee.
- 6.6.5 Eligibility for ETF Coverage, Where Hosted has agreed to cover a customers early termination fee (ETF) from a previous provider, eligibility is subject to the following conditions:
- (a) The customer must have maintained three (3) consecutive months of clear billing history with Hosted; and
- (b) If the Customer is VAT registered, they must provide Hosted with a valid VAT invoice supported by a copy of the final invoice from the previous provider clearly showing the early termination fee incurred. Non-VAT registered customers must still provide a copy of the final invoice.

Any amount paid by Hosted to cover the customer's previous ETF will be added to

the customer's own early termination fee liability if the customer cancels the contract before the end of the agreed term.

7 Payment

- 7.1 The Customer shall pay each invoice submitted to it by Hosted in full, and in cleared funds, within 30 days of receipt.
- 7.2 Without prejudice to any other right or remedy that Hosted may have, if the Customer fails to pay Hosted on the due date Hosted may:
- 7.2.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- 7.2.2 suspend all Services until payment has been made in full.
- 7.3 Time for payment shall be of the essence of the Contract.
- 7.4 All payments payable to Hosted under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.5 All amounts due under the Contract shall be paid by the Customer to Hosted in full without any setoff, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). Hosted may, without prejudice to any other rights it may have, set off any liability of the Customer to Hosted against any liability of Hosted to the Customer.

8 Software licence

- 8.1 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to Hosted within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
- 8.2 If no software licence has been provided to the Customer, the Customer hereby accepts a nonexclusive, non-transferable licence to use the Software on the following conditions:
- 8.2.1 the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent;
- 8.2.2 the Customer shall not use the Software on any equipment other than the equipment set out in the Service Plan, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
- 8.2.3 such licence shall be terminable by either party on 28 days' written notice, provided that Hosted terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or Hosted is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
- 8.2.4 on or before the expiry of this licence, the Customer shall return to Hosted all copies of the Software in its possession.
- 8.3 The Customer acknowledges that the Software will be provided in accordance with the applicable software supplier's service level agreement. Hosted will provide the Customer with details of the applicable Software service levels.
- 8.4 All software purchased through Microsoft New Commerce (NCE) including Microsoft 365 and Azure services are provided on the following conditions:
- 8.4.1 Commitment period – All licenses purchased will be added to the Customers existing Tenants are subject on an annual commitment. Monthly commitment is available upon request and will be charged at the Microsoft RRP (currently 40% over annual).
- 8.4.2 Cancellation period – Any order cancellation of new license orders must be requested within 48 hours of purchase. After this period the commitment period will apply.
- 8.4.3 Pricing – All licenses are aligned with standard Microsoft RRP.
- 8.4.4 Amendment Restrictions – NCE removes the ability to decrease seat license count. All requested licenses when added to the Tenant, after the cancellation period will be subject to the commitment period and cannot be adjusted. The Customer accepts and is responsible for the payment of the full term of the licenses added to the Tenant.

9 Equipment

- 9.1 The quantity and description of the Equipment shall be as set out in the Contract.
- 9.2 The Equipment shall be at the risk of Hosted until delivery to the Customer at the place of delivery specified in the Contract. Hosted shall off-load the Equipment at the Customer's risk.
- 9.3 Ownership of the Equipment shall pass to the Customer on the later of completion of delivery (including without limitation off-loading), or when Hosted has received in full in cleared funds all sums due to it in respect of:
- 9.3.1 the Equipment; and
- 9.3.2 all other sums which are or which become due to Hosted from the Customer on any account.
- 9.4 Until ownership of the Equipment has passed to the Customer under condition 9.3, the Customer shall:
- 9.4.1 hold the Equipment on a fiduciary basis as Hosted's bailee;
- 9.4.2 store the Equipment (at no cost to Hosted) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Hosted's property;



- 9.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- 9.4.4 keep the Equipment insured on Hosted's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of Hosted, ensure that Hosted's interest in the Equipment is noted on the policy, and hold the proceeds of such insurance on trust for Hosted and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 9.5 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 13 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to Hosted on the due date.
- 9.6 Until ownership of the Equipment is transferred to the Customer in accordance with condition 9.3, the Customer grants Hosted, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Hosted in repossessing the Equipment shall be borne by the Customer.
- 9.7 On termination of the Contract for any reason, Hosted's (but not the Customer's) rights in this condition 9 shall remain in effect.
- 9.8 Hosted may appropriate payments by the Customer to such Equipment as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.
- 9.9 The Customer acknowledges that Hosted is not the manufacturer of the Equipment. Hosted shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Hosted for such Equipment. The Customer shall be required to contact the manufacturer of the Equipment in relation to any defects with such Equipment. Hosted has no liability to the Customer in relation to any defects in the Equipment.
- 10 Intellectual Property Rights
- 10.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Hosted. Hosted licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If Hosted terminates the Contract under condition 13.1, this licence will automatically terminate.
- 10.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on Hosted obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Hosted to license such rights to the Customer.
- 10.3 In relation to the Software and/or Equipment:
- 10.3.1 nothing contained in the Contract shall be construed as an assignment of any Intellectual Property Rights in the Software and/or Equipment or user manuals; and
- 10.3.2 the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and/or Equipment and user manuals, and shall comply with all licence contracts, terms of use and registration requirements relating to them.
- 11 Confidentiality and Supplier's property
- 11.1 The Customer shall keep in strict confidence:
- 11.1.1 all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Hosted or its agents; and
- 11.1.2 any other confidential information concerning Hosted's business or its products which the Customer may obtain ("Confidential Information").
- The Customer shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Customer's obligations to Hosted, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 11.2 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
- 11.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
- 11.2.2 was in the other party's lawful possession before the disclosure;
- 11.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 11.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.3 Subject to condition 11.5, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.
- 11.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.
- 11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other

regulatory authority or by a court or other authority of competent jurisdiction. To the extent it is legally permitted to do so, the disclosing party shall give the other party as much notice of such disclosure as possible. Where notice of disclosure is not prohibited and is given in accordance with this condition 11.5, the disclosing party shall take into account the reasonable requests of the other party in relation to the content of such disclosure.

- 11.6 All materials, equipment and tools, drawings, specifications and data supplied by Hosted to the Customer shall at all times be and remain the exclusive property of Hosted, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Hosted, and shall not be disposed of or used other than in accordance with Hosted's written instructions or authorisation.
- 11.7 The above provision of this condition 11 shall survive termination of the Contract, however arising.
- 12 Data Protection
- 12.1 For the purposes of this clause 12:
- 12.1.1 Controller, Processor, Information Commissioner, data subject and personal data, Processing and appropriate technical and organisational measures shall have the meanings given to them in the Data Protection Legislation.
- 12.1.2 Data Protection Legislation shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);
- 12.1.3 UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 12.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 12.3 The parties have determined that, for the purposes of the Data Protection Legislation:
- 12.3.1 Hosted shall process the personal data set out in paragraph 1.1 of schedule 1 as processor on behalf of the Customer; and
- 12.3.2 Hosted shall act as controller of the personal data set out in paragraph 1.2 of schedule 1.
- 12.4 If the determination in clause 12.3 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this clause 12 and schedule 1.
- 12.5 This clause 12.5 applies where Hosted acts as controller pursuant to clause 12.3.2.
- 12.5.1 Without prejudice to Clause 12.2, Hosted:
- (a) shall process personal data in accordance with its privacy policy and shall promptly provide copies of its privacy policy to the Customer upon request;
- (b) undertakes, warrants and represents that its privacy policy, and any amendments, will at all times comply with Data Protection Legislation;
- (c) and as between the parties, is solely responsible for ensuring that the processing of personal data complies with Data Protection Legislation, and in particular, that all required fair processing information is provided to the relevant data subjects.
- 12.5.2 If there are any inconsistencies or conflict between the terms of Hosted's privacy policy and the Contract, the Contract shall take precedence.
- 12.6 In relation to any personal data which Hosted processes in connection with the Contract, in the capacity of a processor on behalf of the Customer (Customer Personal Data), paragraph 1.2 of schedule 1 sets out the scope, nature and purpose of processing by Hosted, the duration of the processing and the types of personal data and categories of data subject.
- 12.7 Without prejudice to clause 12.2, Hosted shall, in relation to Customer Personal Data:
- 12.7.1 process that personal data only on the documented written instructions of the Customer which are set out in paragraph 1.1 of schedule 1 unless Hosted is required by Data Protection Legislation to otherwise process that Customer Personal Data. Where Hosted is relying on Data Protection Legislation as the basis for processing Customer Processor Data, Hosted shall promptly notify the Customer of this before performing the processing required by the Data Protection Legislation unless those Data Protection Legislation prohibit Hosted from so notifying the Customer. Hosted shall immediately inform the Customer if, in the opinion of Hosted, the instructions of the Customer infringe Data Protection Legislation;
- 12.7.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate:
- (a) the pseudonymisation and encryption of Customer Personal Data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and

- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 12.7.3 ensure and procure that that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 12.7.4 promptly assist the Customer, in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with the Information Commissioner, supervisory authorities or other regulators and, in particular, Hosted shall promptly notify the Customer if it receives any complaint, notice or communication (whether from the Information Commissioner, any data subject, supervisory authority or other third party) which relates to processing of Customer Personal Data;
- 12.7.5 notify the Customer without undue delay (and no later than 48 hours) after becoming aware of a personal data breach;
- 12.7.6 at the written direction of the Customer, delete or return to the Customer all Customer Personal Data on termination or expiry of the Contract, and certify to the Customer in writing it has done so, unless Hosted is required by Applicable Law to continue to process that Customer Personal Data, in which case Hosted shall promptly notify the Customer, in writing, of what that Applicable Law is and shall only be permitted to process that Customer Personal Data for the specific purpose so-notified, and all other requirements set out in this clause 12 shall continue to apply to such Customer Personal Data notwithstanding the termination or expiry of the Contract for as long as such Customer Personal Data is processed by Hosted; and
- 12.7.7 maintain adequate records, and, on the Customer's request, make available such information as the Customer may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Customer or the Customer's designated auditor, to demonstrate its compliance with Data Protection Legislation and this clause 12.
- 12.8 Hosted shall not, without the prior written consent of the Customer:
- 12.8.1 appoint or replace (or change the terms of the appointment of) any other processor in relation to Customer Personal Data or transfer any Customer Personal Data to the same; or
- 12.8.2 carry out, via itself or via any other processor, any processing of Customer Personal Data, or transfer any Customer Personal Data, outside of the UK, including processing Customer Personal Data on equipment situated outside of the UK.
- 12.9 Hosted shall indemnify and keep the Customer indemnified from and against any and all costs, damages and expenses of any kind arising from any claim or demand brought by any person, data subject, Information Commissioner or supervisory authority as a result of any breach or alleged breach by Hosted of any Data Protection Legislation or its obligations under liability for losses arising from breaches of this clause 12.
- 13 Limitation of liability
- 13.1 Subject to clause 12.5 the following provisions set out the entire financial liability of Hosted (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:
- 13.1.1 any breach of the Services however arising;
- 13.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and
- 13.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Services.
- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Contract.
- 13.3 Nothing in the Contract excludes the liability of Hosted:
- 13.3.1 for death or personal injury caused by Hosted's negligence; or
- 13.3.2 for fraud or fraudulent misrepresentation.
- 13.4 Subject to condition 12.2 and condition 12.3:
- 13.4.1 Hosted shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- loss of profits; or
 - loss of business; or
 - depletion of goodwill or similar losses; or
 - loss of anticipated savings;
 - or loss of goods; or
 - loss of contract; or
 - loss of use; or
 - loss or corruption of data or information; or
 - any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 13.4.2 Hosted's total liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited the price paid for the Services.
- 13.5 Hosted shall have no liability to the Customer in relation to:-
- 13.5.1 any defect in the Software and/or Equipment;
- 13.5.2 any use by the Customer of the Software and/or Equipment; or
- 13.5.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Software and/or Equipment.
- The Customer will direct any such claims to the manufacturer or supplier of such Software and/or Equipment.
- 14 Termination
- 14.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
- 14.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- 14.1.2 the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- 14.1.3 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- 14.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 14.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party;
- 14.1.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 14.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 14.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 14.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 13.1.4 to condition 13.1.10 (inclusive);
- 14.1.12 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 14.3 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 15 Anti-Slavery and Human Trafficking
- 15.1 In performing its obligations under the Contract, Hosted shall:
- 15.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015;
- 15.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK;
- 15.1.3 include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause;
- 15.1.4 notify the Customer as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract;
- 15.1.5 maintain a complete set of records to trace the supply chain of all Equipment, Software and Services provided to the Customer in connection with the Contract; and
- 15.1.6 permit the Customer and its third party representatives to inspect Hosted's premises, records, and to meet Hosted's personnel to audit Hosted's compliance with its obligations under this clause.
- 15.2 Hosted represents and warrants that at the date of this Contract it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 16 Force majeure
- 16.1 Hosted shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations

under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation:

- 16.1.1 strikes, lock-outs or other industrial disputes (whether involving the workforce of Hosted or any other party);
- 16.1.2 failure of a utility service or transport network;
- 16.1.3 act of God, war, riot or civil commotion;
- 16.1.4 malicious damage;
- 16.1.5 compliance with any law or governmental order, rule, regulation or direction; and
- 16.1.6 accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

17 Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18 Rights and remedies

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

19 Severance

- 19.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 19.2 If any provision or part-provision of this agreement is deemed deleted under condition 17.1, the parties shall negotiate in good faith to amend such provision so that, to the greatest extent possible, the amended provision achieves the intended commercial result of the original provision.

20 Entire agreement

- 20.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each party acknowledges that, in entering into the Contract, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21 Assignment

- 21.1 The Customer shall not, without the prior written consent of Hosted, assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 21.2 Hosted may at any time assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

22 No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23 Third party rights This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

24 Notices

- 24.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - 24.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
 - 24.1.2 sent by fax to its main fax number.
- 24.2 Any notice or communication shall be deemed to have been received:
 - 24.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 24.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - 24.2.3 if sent by fax, at 9.00 am on the next Business Day after transmission.
- 24.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25 Governing law

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

26 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in

connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).