



ICT SERVICES:
ILICOMM MANAGED SUPPORT SERVICES
General Terms and Conditions

This agreement has been made on Date between:

ilicomm Technology Solutions Ltd registered in England under company number 09150338 whose primary place of business is at Unit 5, Aston Cross Business Village, Aston, Birmingham B6 5RQ (hereby known as the “Provider”)

and

<**CLIENT NAME, Client Address**> (hereby known as the “Client”)

Definitions

Please take some time to read the following. It helps in understanding what some of the contract terms mean and explains what we can and cannot do. We endeavour to ensure that we communicate clearly and in as jargon free a way as possible what our support contract will deliver to you. If you feel you need further clarification, please do not hesitate to contact us.

Contract Term:	The standard duration of the contract as defined from the commencement date plus the number of full calendar months specified in clause 1.1, or 12 months from the date of an automatic contract renewal in accordance with clause 1.4.
Client Site Audit:	The document completed by the Provider upon receipt of an order to commence services. It catalogues all the equipment, software and services that will be covered by this agreement and explicitly lists notable exceptions.
Helpdesk:	The call tracking centre operated by the Provider to accept, track, update and resolve ICT issues received from the Client.
Image Build:	The operating system and associated software build created by the Provider or a third party to replicate on a number of computers.
Service Level Agreement:	A document detailing the Provider’s service obligations including the speed of response, the categorisation of faults and the points of escalation in the event of a dispute or disagreement. This information separate to make our contract more precise but a full written copy can be provided to the Client on request.
Support Charge:	The cost of the maintenance delivered by the Provider to the Client as specified in clause 1.2, payable monthly in advance by direct debit only. The Support Charge becomes payable in full if the agreement is cancelled prior to the end of the Contract Term.
Workstation rebuild:	Reinstallation of the software profile of the computer covered under this agreement. A Workstation Rebuild does not constitute a hardware rebuild and if parts are required, the Provider will supply the Client with full details of the costs (if any). Work will be carried out on a ‘parts at cost, no charge for labour’ basis. If the rebuild is the result of a total failure, then it is highly likely that any work or data on the workstation will be lost.

1. CONTRACT TERM, PAYMENT & CANCELLATION

- 1.1. This agreement shall commence on **<Defined in the Scope of your Agreement>** (The Commencement Date) and shall remain in force for the period of 36 months, unless terminated in accordance with clause 1.5 or 1.6. The renewal date is therefore **<Defined in the Scope of your Agreement>**.
- 1.2. The Standard Annual Support Charge for this agreement will be **£<Defined in the Scope of your Agreement>**
- 1.3. Payment of the Support Charge is due 14 days in advance for each 12-month period of the Contract Term.
- 1.4. To ensure an uninterrupted service, this agreement will be renewed automatically for 12 months at the end of the initial Contract Term if the Provider receives no instruction from the Client. **Written notice should be given, at least 90 days prior to the end of the Contract Term** stating that the Client does not wish to renew the agreement to avoid an automatic renewal.
 - 1.4.1. For the avoidance of doubt, once renewed in accordance with clause 1.4, the new Contract Term will be 12 months from the anniversary of the Start date of the contract.
- 1.5. Cancellation of the agreement prior to the specified end date of the Contract Term except in accordance with clause 1.6 below will result in the remaining Support Charge for the full remaining Contract Term becoming due for payment immediately, unless the agreement is cancelled as a result of the Provider's non-performance against its SLA obligations. Changes/exceptions to this policy are at the sole discretion of the Provider.
- 1.6. In the first year of a new contract we offer a break clause at 12 months from the Start Date. This is activated by the Client providing at least 90 days written notice in advance of the first anniversary of the contract. At this point the contract will be cancelled after the first 12-month period with no further charge or obligation on either party.

2. SCOPE OF CONTRACT

- 2.1. Upon payment of the Support Charge, the Provider shall deliver to the Client the technical services outlined in Section 3 below, for the duration of the Contract Term.
- 2.2. The technical support contract in this agreement will cover ICT systems, hardware and software declared prior to the Commencement date, except those explicitly excluded by this contract or the Client Site Audit.
- 2.3. Any new equipment purchased after the Commencement Date and during the Contract term shall not be covered by this agreement unless:
 - 2.3.1. the Provider has Supplied the new equipment to the Client
 - 2.3.2. the Client has informed the Provider of the make, model and specification of the new equipment and the Provider has agreed in writing (letter or e-mail) to include it in this agreement.
- 2.4. The Services in this Contract are delivered in accordance with the Provider's Service Level Agreement (SLA), which can be found here: <https://www.ilicomm.com/Terms/ilicomm-ManagedSupportServices-TC-v1.pdf>. A PDF copy of the SLA can be supplied upon request.

3. TECHNICAL SERVICES

- 3.1. After the signing of this contract, in exchange for payment of the Support Charge, the Client will be provided with the Support Service which includes the following services:
- 3.1.1. Issue Management - the Provider shall accept any ICT issue that falls within the Scope of Contract set out in Section 2 above and shall operate a Helpdesk which will record and track requests for help, faults and other problems using a ticketing system with unique reference numbers. The telephone number is 0121-2893661 (local call rates apply). email (support@ilicomm.com) and online portal is also available.
 - 3.1.2. Remote Monitoring and Management (RMM) – the Provider shall install an RMM software client on each one of the Client’s servers and Windows user devices to deliver ongoing monitoring and management of systems. The availability of this service is dependent on the Client providing administration access to its servers and internet provider granting access via any site firewall or filter.
 - 3.1.3. Patch Management & Updates – Using the RMM software, we will remotely manage and monitor patches and updates of Microsoft Windows devices across the Client’s IT estate. User devices will need to be onsite and conflicting third-party systems will need to be deactivated in order to receive updates.
 - 3.1.4. Remote & Reactive Support – the Provider shall deliver technical support remotely by telephone and e-mail contact, and by the Provider’s own dial in access software where such access is permitted by the Client’s internet security configuration.
 - 3.1.5. Reactive On-site Support - where an ICT issue cannot be resolved remotely, the Provider shall dispatch an engineer to the Client site to continue to resolve the issue on **an unlimited Basis**
 - 3.1.6. Server Rebuilds – Failed network servers will be rebuilt free of charge, providing that the Client is able to make available a viable system state and data backup. Should a viable backup not be available, the server will be rebuilt as per the original build script at an additional cost. This cost is normally three days engineer time.¹
 - 3.1.7. Workstation rebuilds – In the event of failure, workstations will be rebuilt free of charge provided the client is able to make available the Image build originally used. This will return the workstation to its original specification. If the Image Build is not made available. The workstation will be restored with its factory operating system installed.
 - 3.1.8. Strategic Planning Service – the Provider’s Consultants are available to discuss long term IT plans with the Client’s Senior Management Team & ICT manager.
- 3.2. In addition, the Provider shall deliver the following technical services for the duration of the Contract Term
- 3.2.1. <LIST OTHER TECHNICAL SERVICES INCLUDED IN CONTRACT/ FULL CIRCLE BUNDLE ON SEPARATE LINES – as Defined in the Scope of your Agreement>**
- 3.3. Items Not Covered. In a spirit of partnership, the Provider will make efforts to provide support and rectify problems as requested. However, the following are general exclusions to the service provided:
- 3.3.1. Installation and set-up of additional workstations or new software on the network.
 - 3.3.2. Hardware Repair: Equipment supplied by the Provider will be covered by the manufacturer’s warranty, which the Provider will manage on the Client’s behalf. Where this is not the case, equipment will be repaired with no charge for labour provided the Client agrees to the cost of spare or replacement parts. In cases where the equipment is not economically repairable, the item will be declared beyond economical repair with agreement from the Client and equivalent replacement equipment will be offered.

- 3.3.3. Equipment installed at height (e.g. ceiling mounted projectors) cannot be serviced unless access can be provided by the Client in a safe manner. Field technical staff do not carry specialist access equipment. Height access can be arranged for an additional charge.
- 3.3.4. The provider shall not provide an SLA response for any maintenance or repair of problems or malfunctions caused by any modification or enhancements made by the Client or by anyone else
- 3.3.5. other than the Provider. Such issues will be dealt with as advice and guidance requests and dealt with through reasonable endeavours.

¹ *The need to ensure that regular backups be carried out is emphasised. Backup media should be stored in a fireproof safe or off site.*

4. PROVIDER'S OBLIGATIONS

- 4.1. The Provider will deliver the services set out in Section 3 above. In addition, the Provider will:
 - 4.1.1. Communicate effectively and in a timely manner about any changes to the above agreement.
 - 4.1.2. Respond to any requests for information, pricing, advice, or clarification in a timely manner and certainly no later than that set out in the accompanying SLA.
 - 4.1.3. Ensure that the Client's confidential information is treated with care and that all procedures used in supporting the network are carried out in accordance with the GDPR and Data Protection Act 2018.

5. CLIENT'S OBLIGATIONS

- 5.1. The Client will appoint a person to be the main contact for the purposes of the Service Level Agreement. Full contact details must be provided, including an active email address. If the contact person or any contact details are changed the Client must inform the Provider. The Provider takes no responsibility if notices are not received due to incorrect contact details.
- 5.2. The Client will ensure that all problems and issues are raised with the call tracking centre (support@ilicomm.com / 0121-2893661).
- 5.3. The Client will cooperate with the Provider in connection with the Provider's performance and grant full and free access to the equipment along with adequate working space and facilities such as electrical outlets and network connection within a reasonable distance from the equipment.
- 5.4. The Client shall obtain, keep and make available to the Provider machine readable copies of all software, operating systems, drivers and data files relating to the Equipment. The Provider does not assume any liability as a consequence of the Client's inability to use its machine-readable data.
- 5.5. The Client shall not modify, create any derivative work of, or incorporate any other Equipment into the network or any portion thereof. The provider shall not be responsible for any maintenance or repair of problems or malfunctions caused by any modification or enhancements made by the Client or by anyone else other than the Provider.
- 5.6. The Client will not during the term of this Agreement and for a period of 6 months after that without the Company's prior written consent directly or indirectly solicit or offer employment or engagement to any Staff who at the time of such action or during a period of 12 months immediately preceding such action was directly involved in the provision of the Services. The Client warrants that a charge of 60 days labour at the Provider's standard hourly rate of £640 per day will be immediately payable by the Client to the Provider upon breach of these conditions.

6. LIABILITIES

- 6.1. Services provided under this agreement do not guarantee un-interrupted operation of the Client's computers, peripherals, and network.
- 6.2. The liability of the Provider is capped at 100% of the total Charges payable by the Client under the Contract in a 12-month period. The Provider is, not liable for any loss of business, loss of profits, loss of opportunity or any other indirect or consequential loss or damage whatsoever in connection with the Provider's performance under this agreement and the Client hereby indemnifies the Provider in respect of the same.

- 6.3. The Provider has no responsibility for liability to correct, validate, bring into compliance or remedy any problem that is caused in whole, or in part, by the improper or inadequate installation by the Client, any Third Party, or any incompatibility of the Client's environment, hardware or software.
- 6.4. Nothing in this agreement shall limit or exclude the Provider's liability for:
 - 6.4.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors.
 - 6.4.2. fraud or fraudulent misrepresentation; or
 - 6.4.3. any other liability which cannot be limited or excluded by applicable law.

7. Termination

- 7.1. Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement with immediate effect by giving written notice to the other party if:
 - 7.1.1. the other party commits a material breach of any material term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so.
 - 7.1.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 7.1.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 7.1.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8. Force majeure

- 8.1. Neither party shall be in breach nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be. If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate this agreement by giving 10 Business Days' written notice to the affected party.

9. Assignment and Subcontracting

- 9.1. This agreement is personal to the Client and it shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Provider.
- 9.2. The Client confirms it is acting on its own behalf and not for the benefit of any other person.

10. Waiver

10.1. No failure or delay by a party to exercise any right or remedy provided under this agreement 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 any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11. Rights and remedies

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

12. Variation

12.1. Except as expressly provided in this agreement, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13. Severance

13.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

13.2. If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14. Third-party rights

14.1. Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

14.2. The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

15. Governing law & Jurisdiction

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

15.2. 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 this agreement or its subject matter or formation (including non-contractual disputes or claims).

16. Entire Agreement

16.1. This agreement including any appendices and schedules 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.

17. SIGNATURES

Please note:

In order to provide this service to you, we need to process relevant data in accordance with the General Data Protection Regulation (GDPR), 2018. By signing this contract, you also agree to the client Data Processing Agreement laid out in Appendix 1.

If you have any queries about the data we process, please contact our DPO (support@ilicomm.com).

We hereby confirm that we have the authority to enter into this agreement on behalf of our respective organisation and agree to be bound by the terms detailed herein.

For the Client

Print Name:

Job Title:

Signed:

Date of Signature:

For the Provider

Print Name:

Job Title:

Signed:

Date of Signature:

Appendix 1 – Data Processing Agreement

DATA PROCESSING AGREEMENT

between

ILICOMM TECHNOLOGY SOLUTIONS LIMITED

and

[CONTROLLER / CLIENT]

This agreement is dated []

Parties

- (1) ILICOMM TECHNOLOGY SOLUTIONS LIMITED a company registered in England and Wales with company number 09150338 whose registered office is at Unit 5, Aston Cross Business Village, Aston, Birmingham, B6 5RQ (**Supplier**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office address is at [REGISTERED OFFICE ADDRESS] (**Client**)

BACKGROUND

- (A) The Client owns any copyright and any database rights in the Client Data (as defined below).
- (B) This agreement is supplemental to the Contract (as defined below) and introduces further contractual provisions to ensure the protection and security of the Client Data passed from the Client to the Provider for processing.

Agreed terms

1. Interpretation

- 1.1 The following definitions and rules of interpretation apply in this agreement.

Applicable Law: the laws of any member of the European Union or by the laws of the European Union applicable to the Provider.

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

Business Purpose: the purpose or purposes as detailed in Schedule 1.

Charges: the charges payable by the Client to the Provider for the supply of the Services as set out in the Contract.

Claim: has the meaning given in clause

Client Data: means the data or information, in whatever form, described in Schedule 1 as supplied by the Client to the Provider (and in relation to which the Provider is providing the Services) which falls within the meaning of "data" defined by Data Protection Legislation and relates only to "personal data", or any part of such personal data, of which the Client is a "data controller" (each having the meaning set out in Data Protection Legislation).

Client System: any information technology system or systems owned or operated by the Client from which Data is received in accordance with this agreement.

Contract: the Service agreement entered into between the parties in respect of the provision of the Services (as defined below) by the Provider.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services who need to know

the confidential information in question (Representatives) to the other party and that party's Representatives in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Commencement Date: the execution date of the parties indicated above, or if the parties indicate different dates, the latest date

Data Protection Legislation: the DPA 1998, the GDPR, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (SI 2011/1208) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK and, if the GDPR is no longer directly applicable in the UK, any successor legislation to the GDPR or the DPA 1998.

DPA 1998: Data Protection Act 1998.

GDPR: the General Data Protection Regulation ((EU) 2016/679).

Processed Data: any Client Data that has been processed.

Services: the services to be supplied by the Provider under the Contract.

Provider System: any information technology system or systems owned or operated by the Provider to which Data is delivered or on which the Services are performed in accordance with this agreement.

Term: as defined in 1.1 of this agreement.

- 1.2 "Data subject", "personal data", "processing", "process" and "appropriate technical and organisational measures" shall bear the meanings given to those terms respectively in Data Protection Legislation.
- 1.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to writing or written includes email.
- 1.12 Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.13 In the case of conflict or ambiguity between any of the provisions of this agreement and the provisions of any Contract, the provisions of this agreement shall prevail.

2. Scope of Processing

- 2.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 2.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 2.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Provider is the data processor (where “data controller” and “data processor” have the meanings as defined in the Data Protection Legislation). Schedule 1 sets out the scope, nature and purpose of processing by the Provider, and the types of personal data (as defined in the Data Protection Legislation). The duration of the processing shall be for the period as set out in any Contract between the parties from time to time, or otherwise, for the duration of this agreement and until this agreement is terminated in accordance with clause 8.
- 2.3 Without prejudice to the generality of clause 2.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Data to the Provider for the duration and purposes of this agreement.
- 2.4 During the Term, the Provider shall process the Client Data it receives from the Client:
 - (a) solely for the Business Purpose, only to the extent is reasonably necessary to achieve the Business Purpose and for no other purpose except with the express written consent of the Client (and shall only make copies of the Client Data to the extent reasonably necessary for the Business Purpose (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Client Data); and
 - (b) only in accordance with the Client’s written instructions from time to time (provided the Provider shall not be required to do so where such actions may breach any Applicable Law, in which case the Data Processor shall notify the Data Controller of the reasons for any breach it considers to be possible or likely unless the Applicable Law prohibits the Provider from so notifying the Client).
- 2.5 The Client acknowledges that the Provider is under no duty to investigate the completeness, accuracy or sufficiency of the Client’s instructions or the Client Data.

3. Obligations of the Provider

3.1 Without prejudice to the generality of clause 2.1, the Provider shall, in relation to any Client Data processed in connection with the performance by the Provider of its obligations under this agreement:

- (a) ensure that it has in place appropriate technical and organisational measures as set out in clause 5;
- (b) ensure that all personnel who have access to and/or process Client Data are obliged to keep the Client Data confidential;
- (c) not transfer any Client Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (i) the Client or the Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Client Data that is transferred; and
 - (iv) the Provider complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Client Data;
- (d) assist the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Client without undue delay on becoming aware of a security breach concerning the Client Data, or if the Client Data is lost or destroyed or becomes damaged or corrupt or unusable (**Data Breach**);
- (f) at the written direction of the Client, delete or return Client Data and copies thereof to the Client on termination of the agreement in accordance with this agreement, unless it is required by any Applicable Law to keep copies of the Client Data;
- (g) where the Client gives notice to the Provider that it considers a Data Breach to be likely to result in a "high risk" (given the meaning set out in the GDPR) to data subjects, the Provider shall provide the Client with reasonable cooperation and assistance in relation to any notification or other communication that is given to the data subjects affected by the Data Breach; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 3.1 and allow for audits by the Client or the Client's designated auditor in accordance with this agreement.

4. Audit

4.1 The Provider shall keep at its normal place of business detailed, accurate and up-to-date records relating to the processing of the Processed Data by the Provider and to the measures taken under clause 5, including the permissioning and control of the Processed Data (**Records**).

4.2 The Provider shall for the purpose of auditing the Provider's compliance with its obligations under this agreement permit the Client and its third-party representatives, on not less than 10 Business Days' notice during normal business hours to:

- (a) have access to, and take copies of, the Records and any other information held at the Provider's premises or on the Provider System; and
- (b) inspect all Records, documents and electronic data and the Provider System and facilities and equipment.

Such audit rights may be exercised only once in any calendar year during the Term save to the extent that the Provider is in material breach of its obligations under this agreement or any Data Protection Legislation and in such circumstances the notice period referred to in this clause 4.2 shall not apply.

4.3 The Provider shall give all necessary assistance to the conduct of such audits during the Term.

4.4 Audit access by any third-party representative of the Client shall be subject to such representative agreeing confidentiality obligations equivalent to those in clause 10 in respect of the information obtained.

5. Security Measures

5.1 The Provider shall, in relation to any Client Data processed in connection with the performance by the Provider of its obligations under this agreement, ensure that it has in place appropriate technical and organisational measures, to protect against accidental, unauthorised or unlawful processing or alteration of Client Data and against accidental loss or destruction of, damage or alteration to Client Data, appropriate to the harm that might result from the accidental, unauthorised or unlawful processing or loss, destruction, alteration or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Such measures may include, where appropriate:

- (a) pseudonymising and encrypting Client Data,
- (b) ensuring confidentiality, integrity, availability and resilience of its systems and services;
- (c) ensuring that availability of and access to Client Data can be restored in a timely manner after an incident; and
- (d) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.

6. Client Warranties and Indemnity

6.1 The Client warrants and represents that:

- (a) the processing of the Client Data from time to time (including processing for direct marketing purposes) has been carried out in accordance with the Data Protection Legislation at all times;
 - (b) it is not aware of any circumstances likely to give rise to breach of any of the Data Protection Legislation in the future;
 - (c) the Provider is entitled to process the Client Data for the Business Purpose and such use will comply with all Data Protection Legislation;
 - (d) all data subjects relating to the Client Data have given their valid written consent and, where required under the Data Protection Legislation, their explicit consent to the transfer of their personal data by the Client to the Provider and to the processing of their personal data by the Provider for the Business Purpose within the European Economic Area;
 - (e) all Client Data is necessary, accurate and up-to-date;
 - (f) the Client Data contains nothing that is defamatory or indecent; and
 - (g) it is registered with all relevant data protection authorities to process all Client Data for the Business Purpose.
- 6.2 The Provider shall indemnify the Client against all claims, liabilities, costs, expenses, damages and losses (and all other reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with the processing of the Client Data under this agreement (**Claim**), except to the extent that the Claim has arisen out of or in connection with any negligence or wilful default of the Client.
- 6.3 The Client acknowledges that:
- (a) the Provider is reliant on the Client for direction as to the extent to which the Provider is entitled to use and process the Client Data; and
 - (b) any Claim includes any claim or action brought by a data subject arising from any action or omission by the Provider, to the extent that such action or omission resulted directly or indirectly from the Client's instructions.
- 6.4 If any third party makes a Claim, or notifies an intention to make a Claim, the Provider shall:
- (a) give written notice of the Claim to the Client as soon as reasonably practicable;
 - (b) not make any admission of liability in relation to the Claim without the prior written consent of the Client;
 - (c) at the Client's request and expense, allow the Client to conduct the defence of the Claim including settlement; and
 - (d) at the Client's expense, co-operate and assist to a reasonable extent with the Client's defence of the Claim.

7. Limitation of liability

- 7.1 Nothing in this agreement shall limit or exclude the Provider's liability for:
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- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, neither party shall be liable to the other party, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill or reputation; or
 - (g) any indirect or consequential loss.
- 7.3 Subject to clause 7.1, the Provider's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to an amount equal to the aggregate value of the Charges in the 12 month period prior to the date of the breach that gives rise to the liability of the Provider to the Client (or in the case of multiple breaches, the 12 month period shall be calculated from the date of the first such breach).
- 8. Term and termination**
- 8.1 Subject to earlier termination in accordance with clause 8.2, this agreement shall commence on the Commencement Date and shall remain in force until terminated upon the later of (**Term**):
- (a) termination of the Contract; or
 - (b) in the absence of a Contract, the expiry of 20 Business Days' written notice.
- 8.2 Upon receipt of written notice of termination from the Client or upon giving written notice of termination to the Client by the Provider (in either case whether in respect of this agreement or the Contract), the Provider shall as soon as reasonably practicable:
- (a) return or destroy any Client Data (at the absolute discretion of the Client and in such manner as the Client may reasonably direct in writing) that is in the possession or control of the Provider, its employees, agents, subcontractors and/or sub-processors;
 - (b) to the extent technically and legally practicable, erase all Client Data from its computer and communications systems and devices used by it, or which is stored in electronic form;

- (c) use its reasonable endeavours to procure that any third parties erase all Data to the extent technically and legally practicable which is stored in electronic form on systems and data storage services provided by third parties; and
 - (d) certify in writing to the Client (by a certificate signed by a director of the Provider) that it has complied with its obligations under this clause 8.3.
 - 8.3 Notwithstanding termination, all provisions of this agreement will remain in force until the Provider has complied with the terms of clause 8.3. Termination of this agreement 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 agreement which existed at or before the date of termination.
 - 8.4 Clauses 2.1, 6, 7, 10, and 13 shall survive termination of this agreement.
 - 9. Confidentiality**
 - 9.1 The Provider acknowledges that the Client's Confidential Information includes any Client Data.
 - 9.2 The term Confidential Information does not include any information that:
 - (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause).
 - (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - (d) was known to the receiving party before the information was disclosed to it by the disclosing party;
 - (e) the parties agree in writing is not confidential or may be disclosed; or
 - (f) is developed by or for the receiving party independently of the information disclosed by the disclosing party.
 - 9.3 Each party shall keep the other party's Confidential Information confidential and shall not:
 - (a) use any Confidential Information except for the Business Purpose; or
 - (b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this agreement.
 - 9.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Business Purpose, provided that:
 - (a) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
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(b) at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this agreement.

9.5 A party may disclose Confidential Information to the extent required by Applicable Law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, as far as it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.

9.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in this agreement, are granted to the other party, or are to be implied from this agreement.

9.7 The provisions of this clause shall continue to apply after termination of this agreement.

10. Sub-processors

10.1 Provider.

10.2 The Client consents and authorises the Supplier to appoint a third party (**Subcontractor**) to process the Client Data provided that the Subcontractor's contract:

- (a) is on terms that are substantially the same as those set out in this agreement; and
- (b) terminates automatically on termination of this agreement for any reason.

As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any Subcontractor appointed by it.

Schedule 1 Client Data, Purpose and Processing

This Schedule sets out the nature of the processing to be carried out by the Provider, the particulars of the Client Data to be provided by the Client and the purpose for which the Client Data is provided, subject to any variation, amendment, or as more particularly described in any Contract entered into between Client and Provider from time to time.

The Client agrees to provide, facilitate and/or grant access to the relevant Client Data required by the Provider for the Business Purpose.

Purpose:	Description and Types of Client Data:	Category of Data Subject:	Description of Processing:
Technical support services to be provided by the Provider utilising remote access to the Client System	All information stored electronically that constitutes personal data (including personal details, family and lifestyle details, education and training details, medical details,	Pupils, former pupils, and prospective pupils at The Client Employees, former employees and prospective employees at The Client Parents of pupils, former pupils and prospective pupils	The use, recording, storage, and retrieval, of Client Data by the Provider (as part of all of the data on the Client System) via remote access to the Client System via third party software as part of the access to the Client System required by the Provider in order to provide

	employment details. financial details and contractual details.)	<p>at The Client</p> <p>Governors and former governors of The Client</p> <p>Named individual contacts of individuals and organisations that deal with The Client (e.g. suppliers, charitable organisations, consultants etc)</p>	the technical support services
Cloud based data back-up of Client files to be provided by the Provider	All information stored electronically that constitutes personal data (including personal details, family and lifestyle details, education and training details, medical details, employment details. financial details and contractual details.)	<p>Pupils, former pupils, and prospective pupils at The Client</p> <p>Employees, former employees and prospective employees at The Client</p> <p>Parents of pupils, former pupils and prospective pupils at The Client</p> <p>Governors and former governors of The Client</p> <p>Named individual contacts of individuals and organisations that deal with The Client (e.g. suppliers, charitable organisations, consultants etc)</p>	The copying, recording, storage and encryption of Client Data as part of a back-up of the all data held on the Client System and the transfer and/or retrieval of such data to/from cloud based data storage provided by third parties
Lease of server(s) and associated equipment by the Provider to the Client to be located at the Client's premises and (where applicable) the replacement, renewal, and/or decommissioning of such equipment	All information stored electronically that constitutes personal data (including personal details, family and lifestyle details, education and training details, medical details, employment details. financial details and contractual details.)	<p>Pupils, former pupils, and prospective pupils at The Client</p> <p>Employees, former employees and prospective employees at The Client</p> <p>Parents of pupils, former pupils and prospective pupils at The Client</p> <p>Governors and former governors of The Client</p> <p>Named individual contacts of individuals and organisations that deal with The Client (e.g. suppliers, charitable organisations, consultants etc)</p>	The collection, recording, storage, adaptation and retrieval of Client Data (as part of all of the data held on the server(s)) and the transfer and/or erasure and/or destruction of the Client Data in the event of the removal of the sever(s) from the Client's premises or renewal, replacement and/or decommissioning of the server(s)

