

# TERMS & CONDITIONS

**Altinet Limited, trading under the brand name ARO and part of the Arrow group (“Altinet”)** reserves the right at any time to modify these Terms in its sole discretion, without liability to Customer. This Agreement, as amended, will be effective upon use of the Products for all existing users immediately after any amended terms are posted online at <https://www.aro.tech>. Customer agrees to be bound by this Agreement, as modified. If Customer does not agree to any changes to the Terms, it must stop using the Products and terminate its account immediately. It is incumbent upon Customer to check for any amendments to these Terms and review the most current version of this Agreement from time to time so that it will be apprised of any changes.

## Background

- Altinet has developed and makes available the Available Services to certain customers.
- The Customer wishes to be able to engage Altinet to provide the Available Services in its business operations and acknowledges that by ordering certain Available Services that the specific terms set out in this agreement which relate to those particular Available Services shall then apply, subject to an agreed and executed Statement of Work.
- Altinet has agreed to provide, and the Customer has agreed to take and pay for, the Managed Services, subject to the terms and conditions of this agreement (that apply to those Managed Services) and execution of an appropriate Statement of Work by the parties.

## Agreed Terms

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause 1 apply in this agreement.

**Acceptance Date:** has the meaning given in clause 5.5.

**Altinet Software:** has the meaning given to that term in the definition of Software.

**Altinet's System:** the information and communications technology system to be used by the Altinet (or any of its sub-contractors) in performing the Services, including the Hardware, the Software, the Customer-site Equipment and communications links between the Hardware and the Customer-site Equipment and the Customer's Operating Environment.

**Assets:** any Customer-site Equipment, Software or Intellectual Property Rights used by Altinet exclusively for the delivery of the Managed Services to the Customer.

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

**Change Control Procedure:** the procedures set out in clause 17.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, consultants, officers, representatives, advisers, agents or sub-contractors involved in the provision or receipt of the Services (together, its Representatives) to the other party or that party's

Representatives in connection with this agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Customer Data:** any information that is provided by or on behalf of the Customer to Altinet as part of the Customer's use of the Services, including any information derived from such information.

**Customer Personal Data:** any personal data comprised in the Customer Data.

**Customer Site:** any premises occupied by the Customer at which it receives the Managed Services.

**Customer-site Equipment:** any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by Altinet as part of the Managed Services.

**Customer's Operating Environment:** the Customer's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Services and which interfaces with Altinet's System in order for the Customer to receive the Services, but excluding the Customer-site Equipment.

**Customer's Project Manager:** the member of the Customer Account Team appointed in accordance with clause 14.1(c).

**Customer Software:** has the meaning given to that term in the definition of Software.

**Cybersecurity Requirements:** all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive (EU) 2016/1148), Commission Implementing Regulation (EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

**Data Controller:** has the meaning given to that term in the DPA.

**Data Processor:** has the meaning given to that term in the DPA.

**Data Security Policies:** means the document setting out the policies and procedures in relation to data protection and IT Security requirements which Altinet can provide on request by the Customer.

**Designated Representative:** has the meaning given in clause 35.2.

**Disaster Recovery Plan:** the plans maintained by Altinet containing the actions to be taken, the resources to be used and the procedures to be followed to support recovery in the event of a disaster affecting the Managed Services.

**Dispute:** has the meaning given in clause 35.1.

**Dispute Notice:** has the meaning given in clause 36.1.

**Dispute Resolution Procedure:** the procedure described in clause 35.

**Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Acts 1998 and 2018 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary

legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Acts 1998 and 2018.

**Effective Date:** the date of this agreement.

**Employment Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

**Error:** has the meaning given in clause 5.3.

**Exit Plan:** has the meaning given in clause 23.1, as such exit plan is updated and amended by the parties from time to time in writing.

**Extended Term:** has the meaning given in clause 22.1.

**Fees:** the fees payable to Altinet, as set out in the Statement of Work.

**Force Majeure Event:** has the meaning given in clause 24.1.

**Generally Accepted Accounting Principles:** all generally accepted accounting principles including generally accepted UK accounting principles comprising the Financial Reporting Standards issued by the UK Financial Reporting Council (and to the extent applicable, Statements of Standard Accounting Practice (SSAPs) issued by predecessors to the UK Financial Reporting Council).

**Good Industry Practice:** the standards that fall within the upper quartile for the provision of business-critical managed services substantially similar or identical to the Managed Services, having regard to factors such as the nature and size of the parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

**Hardware:** all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by Altinet to deliver the Managed Services to the Customer as set out under the relevant Statement of Work.

**Initial Term:** the period as set forth in the Statement of Work.

**Invention:** any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium.

**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 right, 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 existing and future rights capable of present assignment, applications for and renewals or extensions of and rights to claim priority from such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**IT Systems:** all network and information systems and data, including personal and non-personal data (Data), falling within the definition of "network and information systems" in regulation 1(3) of the NIS Regulations, including all computer hardware (including network and telecommunications equipment) and mobile devices and software (including associated user manuals, object code and source code and other materials sufficient to enable a reasonably skilled programmer to maintain and modify the software (Source Code)) and firmware (together, Software).

**Managed Services:** the services selected from the Available Services and as described in the Success Criteria Document to be performed by Altinet in accordance with this agreement and the applicable Statement of Work.

**Success Criteria Document:** shall mean the list of objectives required to go live with the Managed Services as may be relevant from time to time.

**Normal Business Hours:** 8.30 am to 5.30 pm local UK time on Business Days.

**Permitted Purpose:** has the meaning given in clause 20.2(a).

**Pre-Existing IPR:** has the meaning given in clause 19.1.

**Priority 1, 2 and 3 incidents:** have the meanings as set forth in the Service Schedule.

**Project Plan:** the plan to be developed in the planning stage of the Set-up Services as may be relevant from time to time.

**Regulatory Requirement:** has the meaning given in clause 22.11.

**Relevant Transfer:** a transfer of employment to which the Employment Regulations applies;

**Replacement Supplier:** any entity with which the Customer contracts (or proposes to contract) to provide services similar to all or any of the Managed Services and Maintenance upon the expiry or termination of all or any part of this agreement for any reason.

**Representatives:** has the meaning given to that term in the definition of Confidential Information.

**Review Meeting:** has the meaning given in clause 18.3.

**Security Incidents:** any event having an actual adverse effect on the security of IT Systems.

**Service Credit:** any credits payable to the Customer in accordance with the Service Level Arrangements.

**Service Requirements:** where applicable, means the Customer's requirements for the Managed Services as appended to this agreement (if any).

**Services:** the Set-up Services, the Managed Services, the Maintenance and the Transition Services.

**Set-up Services:** the due diligence, configuration and related work referred to in clause 5 to be performed by Altinet to set up the Managed Services.

**Software:** any software used by Altinet (or any of its sub-contractors) to provide the Managed Services to the Customer whether owned by a third party (Third Party Software: the VAR Products), or by the Customer (Customer Software: ).

**SoW Charges:** the sums payable for the Works as set out in a Statement of Work.

**Statement of Work ("SoW"):** a detailed plan, agreed in accordance with clause 3, describing the services to be provided by Altinet.

**Third Party Software:** has the meaning given to that term in the definition of Software.

**Transferring Contracts:** the third-party contracts (including licences to Third-Party Software) that Altinet reasonably considers necessary to enable the transition of the Managed Services to the Customer or any Replacement Supplier on expiry or termination of all or any part of this agreement for any reason.

**Transition Services:** the services to be provided by Altinet to implement the Exit Plan.

**Update:** means any minor point release that the Customer is entitled to receive as part of its standard maintenance package.

**VAR Products:** means the third party resold products available for purchase as listed the relevant the Statement of Work.

**Version:** means a major point release or other new version of the Software or any Firmware which introduces new functionality or other improvements to which the Customer is not entitled under standard maintenance and support.

**Virus:** anything or device (including any software, code, file or programme) which may:

- (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- (b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or
- (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**Work Product:** all deliverables and all other reports, documents, materials, techniques, ideas, concepts, trade marks, know-how, algorithms, software, computer code, routines or sub-routines, specifications, plans, notes, drawings, designs, pictures, images, text, audio-visual works, inventions, data, information and other items, expressions, works of authorship or work product of any kind that are authored, produced, created, conceived, collected, developed, discovered or made by Altinet (or any of its sub-contractors) in connection with the Services or which relate in any manner to the Services or which result from any work performed by Altinet (or any of its sub-contractors) for the Customer, including any and all Intellectual Property Rights therein.

**Works:** the Available Services which are provided by Altinet under a Statement of Work, including services which are incidental or ancillary to the Managed Services.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.

1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7 A reference to **writing** or **written** includes email.

1.8 Any phrase introduced by the words **including, includes, 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.

1.9 References to clauses and Schedules are to the clauses and schedules of this agreement. References to paragraphs are to paragraphs of the relevant Schedule.

1.10 A **person** includes a natural person, corporate or unincorporated body (whether or not having

separate legal personality) and that person's personal representatives, successors or permitted assignees.

1.11 A reference to this agreement includes the Schedules and the recitals. If there is an inconsistency between any of the provisions in the main body of this agreement and the schedules, the provisions in the main body of this agreement shall prevail.

1.12 Data subject, personal data and processing shall bear the meanings given to those terms respectively in the GDPR.

## 2. COMMENCEMENT AND DURATION

2.1 This agreement shall commence on the date when it has been signed by all the parties and, if renewed, shall continue, unless terminated earlier in accordance with clause 22 (Termination), until either party gives to the other party written notice to terminate. Such notice shall be served no earlier than the first anniversary of the date of this agreement and shall expire on the completion of all Statements of Work entered into before the date on which it is served.

2.2 For the avoidance of doubt any termination of this agreement shall not automatically terminate an existing Statement of Work unless expressly set out in the termination. Existing Statements of Work shall continue until their natural expiry or termination in accordance with their terms.

2.3 If there are no uncompleted Statements of Work as at the date notice to terminate is served under clause 1, such notice shall terminate this agreement with immediate effect.

2.4 The parties shall not enter into any further Statements of Work after the date on which notice to terminate this agreement is served under clause 1.

2.5 The Customer may procure any of the Available Services by agreeing a Statement of Work with Altinet pursuant to clause 3 (Statements of Work).

2.6 Altinet shall provide the Works from the date specified in the relevant Statement of Work.

## 3. STATEMENTS OF WORK

3.1 Each Statement of Work shall be agreed in the following manner:

(a) the Customer shall ask Altinet to provide any or all of the Available Services and provide Altinet with as much information as Altinet reasonably requests in order to prepare a draft Statement of Work for the Available Services requested;

(b) following receipt of the information requested from the Customer Altinet shall, as soon as reasonably practicable either:

(i) inform the Customer that it declines to provide the requested Available Services; or

(ii) provide the Customer with a draft Statement of Work.

(c) if Altinet provides the Customer with a draft Statement of Work pursuant to clause (ii), Altinet and the Customer shall discuss and agree that draft Statement of Work; and

(d) both parties shall sign the draft Statement of Work when it is agreed.

3.2 Unless otherwise agreed, the SoW Charges shall be calculated in accordance with the Reference Charges.

3.3 Altinet may charge for the preparation of Statements of Work on a time and materials basis in accordance with Altinet's daily fee rates as published online at the web address notified to the Customer from time to time by Altinet.

3.4 Once a Statement of Work has been agreed and signed in accordance with clause 1(d), no amendment shall be made to it except in accordance with the provisions of this agreement relating to Change control pursuant to clause 17 or a Variation pursuant to clause 29.3.

3.5 Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.

## 4. ALTINET'S RESPONSIBILITIES

4.1 Altinet shall use reasonable endeavours to provide the Works, and deliver the Deliverables to the Customer, in accordance with a Statement of Work in all material respects. Altinet shall provide the Works with reasonable care and skill.

4.2 Altinet shall use reasonable endeavours to meet the Milestones specified in a Statement of Work but any such dates shall be estimates only and time for performance by Altinet shall not be of the essence of this agreement.

4.3 Altinet shall appoint a manager in respect of the Works to be performed under each Statement of Work, such person as identified in the Statement of Work. That person shall have authority to contractually bind Altinet on all matters relating to the relevant Works (including by signing Change Orders). Altinet shall use all reasonable endeavours to ensure that the same person acts as Altinet's manager throughout the term of the relevant Statement of Work, but may replace that person from time to time where reasonably necessary in the interests of Altinet's business.

4.4 Altinet shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer's premises and that have been communicated to it, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

## 5. SET-UP SERVICES

5.1 Altinet shall appoint Altinet's Project Manager, who shall have the authority to contractually bind Altinet on all matters relating to this agreement. Altinet shall use reasonable endeavours to ensure continuity of Altinet's Project Manager, but has the right to replace him from time to time where reasonably necessary in the interests of Altinet's business.

5.2 Altinet shall perform the Set-up Services in accordance with the timetable set out in the Service Schedule. Altinet shall use reasonable endeavours to meet the relevant performance dates but any such dates shall be estimates only, and time shall not be of the essence in this agreement.

5.3 When Altinet considers that the Managed Services are ready for activation it shall so notify the Customer. Within five Business Days of such notification the Customer shall review the operation of the Managed Services to confirm that they function in material conformance with the Success Criteria Document. If the Managed Services fail in any material respect to conform with the Success Criteria Document the Customer shall give Altinet a detailed description of any such non-conformance (**Error**) in writing, within the five Business Day review period.

5.4 Altinet shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, re-submit the Managed Services to the Customer. The provisions of clause 3 and this clause 5.4 shall then apply again, up to three additional times. If Altinet is unable to correct the Error after three attempts, either party may terminate this agreement with immediate effect by giving written notice to the other party, without further liability to the other in respect of the Error or failure to provide the Managed Services in accordance with this agreement.

5.5 If the Managed Services are found to conform with the Success Criteria Document or if the Customer does not provide any written comments within the five Business Day review period described in clause 3, the Managed Services shall be deemed accepted as from the date of the notification or expiry of the five Business Day review period (in each case the **Acceptance Date**).

## 6. SERVICE PROVISION

6.1 Altinet shall provide the Managed Services from the Acceptance Date until expiry or termination of this agreement for any reason.

6.2 The Service Level Arrangements shall apply with effect from the start of the first complete month commencing occurring at least thirty (30) days after the Acceptance Date.

6.3 The Customer shall not store, distribute or transmit through the Managed Services any material that:

(a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) depicts sexually explicit images; and/or

(d) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity.

6.4 The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).

6.5 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by Altinet in writing.

This includes informing Altinet promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, Altinet shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services with or without notice in an emergency situation). The Customer shall not provide the Managed Services directly or indirectly to third parties.

6.6 Altinet reserves the right to:

(a) modify Altinet's System, its network, system configurations or routing configuration; or

(b) modify or replace any Hardware or Software in its network or in equipment used to deliver any

Service over its network,

provided that this has no adverse effect on Altinet's obligations under this agreement and its provision of the Services or the Service Level Arrangements. If such changes will have an adverse effect, Altinet shall notify the Customer and the parties shall follow the Change Control Procedure.

## 7. PROFESSIONAL SERVICES AND CONSULTANCY

7.1 If a Statement of Work sets out any consultancy services to be provided by Altinet then the terms of this clause 7 (and all sub-clauses under it) shall apply to that part of the Works.

7.2 Altinet shall ensure that it uses personnel who are suitably trained, experienced and qualified.

7.3 Altinet shall be responsible for the performance of its personnel through which Altinet provides the consultancy services.

7.4 Altinet may substitute any of its personnel who provide consultancy services under this agreement or in relation to any Statement of Work with a contractor or other appropriate substitute and Altinet shall be liable for those third parties as though they were its own personnel. Such third parties shall be subject to duties of confidentiality similar to those set out in this agreement and Altinet shall ensure that they observe the requirements set out in clause 11 (Customer Data).

7.5 The parties acknowledge and agree that no Transfer is intended to take place within the meaning of the Employment Regulations and each Party agrees to indemnify the other Party for any loss due to any deemed Transfer taking place in relation to the provision of the Managed Services by Altinet under this agreement.



## 8. DELIVERY, INSTALLATION AND DELAYS

8.1 This Clause 8 and each sub-clause under it shall only apply where Altinet is providing and installing Hardware. If no Hardware is being provided and installed by Altinet, this Clause 8 shall not apply. If Hardware is being provided by Altinet but installed by the Customer then this clause 9 shall not apply except for sub-clauses 2 and 8.6 relating to Delivery.

8.2 Altinet shall deliver each item of Hardware and the relevant Software to the Site(s) on or before the applicable Delivery Date for that item.

8.3 Altinet shall supply to the Customer, within a reasonable time before any relevant Delivery Date, such information and assistance as may be necessary to enable the Customer to prepare the Site(s) for the installation.

8.4 The Customer shall, at its own expense, prepare the Site(s) in accordance with the information provided by Altinet in advance of each relevant Delivery Date. The Customer may request reasonable assistance from Altinet to carry out such preparation.

8.5 Altinet shall complete installation of each item of Hardware and any relevant Software at the Site(s) by the Installation Date for that item of Altinet Hardware or Software Module.

8.6 If any delivery is delayed at the request of, or because of the acts or omissions of, the Customer, the Project Plan shall be amended to take account of such delay.

8.7 Altinet shall provide the System on or before the Completion Date specified in the Statement of Work or the Project Plan.

## 9. TITLE AND RISK

9.1 Title in the Hardware shall only pass to the Customer upon the earlier of either: 1) the expiry of the initial 12 month period from the Commencement Date, or 2) upon receipt by Altinet in cleared funds payment in full of the total cost of the Hardware provided by Altinet to the Customer.

9.2 Property shall at all times remain vested in Altinet or its licensor, and Altinet's rights shall be governed by the terms of any license relating to such Hardware.

9.3 Risk in the Hardware shall pass to the Customer:

(a) If delivered by Altinet to a place nominated by the Customer, when tendered for delivery at that place; or

(b) If collected by the Customer then, when loaded onto the Customer's (or its agent's) vehicle, or at such time as they are available for so loading and would have been loaded but for the Buyer's failure to collect them.

(c) If withheld by Altinet for any valid reason, at such time as Altinet would have been able to collect them had Customer not been so withholding them,

And the Customer is responsible for insuring the hardware and software from any such time.

9.4 Until such time as property in the Hardware passes to the Customer:

(a) The Customer shall hold the Hardware as Altinet's fiduciary agent and bailee and shall keep all such items separate and distinct from those of the Customer and Third Parties, and separately stored, protected and adequately insured, and identified as Altinet's property. Until such time, the Customer shall be entitled to resell or use such items in the ordinary course of its business, but shall account to Altinet for the proceeds of sale or otherwise of such items, whether tangible or intangible, including insurance proceed, and shall keep all such proceeds separate and distinct from any moneys ore property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and adequately insured; and

(b) Provided that the hardware is still in existence and has not been resold then Altinet shall be entitled at any time to require the Customer to deliver up the Hardware to Altinet and, if the Customer fails to do so forthwith, to enter on any premises of the Buyer or any third party where such items are stored and repossesses them. The Customer will indemnify Altinet for and loss of degradation of or damage to any

Hardware caused whilst such Hardware is in the possession or under the control of the Customer.

9.5 Any Hardware and/or Software supplied to the Customer which is subject to any restrictions or provisions imposed by the manufacturers and/or licensor's conditions are supplied to the Customer by Altinet subject to any such conditions and on the terms of any applicable license agreement.

9.6 The Customer is not entitled to pledge or in any way charge by way of security for any indebtedness any Hardware and/or Software which remain the property of Altinet (or its licensor) but, if the Customer does so, then all moneys owing by the Customer to Altinet shall (without prejudice to Altinet's other rights and remedies) become immediately due and payable.

## 10. ALTINET PERSONNEL: SYSTEM AND SUPPORT SERVICES

10.1 This Clause 10 and each sub-clause under it shall only apply where:

- (a) Altinet is providing and installing Hardware requiring the attendance of Altinet Personnel; or
- (b) Altinet is providing Consulting Services; or
- (c) Altinet is providing Support Services; or
- (d) Altinet is providing Maintenance Services.

10.2 Altinet undertakes that its employees and contractors, while on the Site(s) or any other premises of the Customer, will comply with all relevant rules and regulations laid down by the Customer from time to time for the behaviour of its own employees and contractors, as notified to Altinet in writing to it from time to time. Altinet shall remove any employee or contractor whom the Customer can demonstrate has failed to comply with such rules, regulations and requirements.

10.3 Altinet alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of its own employees. Altinet assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.

10.4 During the term of this agreement and for a period of six months after its termination neither party shall, without the prior written consent of the other, solicit, or permit any Affiliate or Associate to solicit, the employment of any person who is employed by the other party in the course of developing, supplying, maintaining or supporting the Services or any part of them.

10.5 Any advice or other statement given as part of the Works but where not expressly required and set out in a Statement of Work shall not be relied upon by the Customer and is given as guidance only. Where Altinet provides advice as part of the Managed Services then the Customer may not hold out that advice to any third party as being reliable and that advice is intended for the specific and limited benefit of the Customer directly.

## 11. CUSTOMER DATA

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation including the Data Security Policies. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

11.2 The parties acknowledge that:

(a) if Altinet processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the data controller and Altinet is the data processor for the purposes of the Data Protection Legislation (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).

(b) the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and Altinet's other obligations under this agreement.

11.3 Without prejudice to the generality of clause 1, the Customer will ensure that it has all necessary

appropriate consents and notices in place to enable lawful transfer of the Personal Data to Altinet for the duration and purposes of this agreement so that Altinet may lawfully use, process and transfer the Personal Data in accordance with this agreement on the Customer's behalf.

11.4 Without prejudice to the generality of clause 1, Altinet shall, in relation to any Personal Data processed in connection with the performance by Altinet of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of the Customer unless Altinet is required by the laws of any member of the European Union or by the laws of the European Union applicable to Altinet to process Personal Data (**Applicable Laws**). Where Altinet is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Altinet shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Altinet from so notifying the Customer;

(i) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Altinet, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

(c) not transfer any Personal Data outside of the EEA unless the following conditions are fulfilled:

(i) the Customer or Altinet has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) Altinet complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) Altinet complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

(d) assist the Customer, at the Customer'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 Customer without undue delay on becoming aware of a Personal Data breach;

(f) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause 11.

11.5 The Customer consents to Altinet's use of third party service providers (such as Amazon Web Services) as third-party processors of Personal Data under this agreement. Altinet confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 11. As between the Customer and Altinet, Altinet shall remain liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

11.6 Either party may, at any time on not less than 30 days' notice, revise this clause 11 UPDATE FC by

replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

11.7 Altinet shall follow its archiving and security procedures for Customer Data, including those set out in clause 13 (Security) and as described in the Data Security Policies.

11.8 Altinet shall promptly notify the Customer in writing of any actual or suspected loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Altinet to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data to be maintained by Altinet or its service providers. Altinet shall not be responsible for any loss, destruction, alteration or unauthorised access to or disclosure of Customer Data caused by any third party (except to the extent those third parties are sub-contracted by Altinet to perform services related to Customer Data maintenance and back-up and who provide their own remedies). This clause 8 is without prejudice to the generality of clause 11.1.

11.9 If Altinet receives compensation from third party service provider for data loss related to the Customer data then Altinet shall hold that money on trust for the affected Altinet customers and the Customer shall receive an interest in that compensation proportionate to the harm suffered by the Customer relative to the harm suffered by other Altinet Customers. Altinet shall use reasonable endeavours to recover any such amounts from a third-party service provider in the event it may be entitled to do so.

## 12. ALTINET'S OBLIGATIONS

12.1 Altinet undertakes that the Services will be performed with all reasonable skill and care and in accordance with Good Industry Practice and the provisions of this agreement that the Managed Services will be provided substantially in accordance with the Success Criteria Document.

12.2 The undertaking in clause 1 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to Altinet's instructions.

12.3 If the Services do not conform with the undertaking in clause 1, Altinet shall, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking in clause 12.1.

12.4 Notwithstanding the foregoing, Altinet does not warrant that the Customer's use of the Managed Services shall be uninterrupted or error-free.

12.5 This agreement shall not prevent Altinet from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided under this agreement.

## 13. SECURITY

13.1 Altinet shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to any and all Services, Altinet's System and related networks or resources and the Customer Data, in accordance with Good Industry Practice.

13.2 Altinet shall ensure that Altinet's System is designed, maintained and upgraded at all times so as to minimise the risk of attack by Viruses. The parties agree that if Viruses are found, each of them shall co-operate with the other to reduce the effect of the Viruses and, particularly if Virus causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and restore the Services to their original operating efficiency. The costs of complying with this clause 2 shall be apportioned between the parties on a pro rata basis according to fault.

13.3 The Customer shall promptly inform Altinet if it suspects or uncovers any breach of security and shall

use all commercially reasonable endeavours to promptly remedy such breach.

13.4 The Customer shall have the right, in its absolute discretion, to require Altinet not to use specified individuals employed or engaged by Altinet, or by a sub-contractor, in the performance of specified elements of the Services. The Customer shall not exercise this right in breach of any law. In the event that the Customer exercises this right, then Altinet shall inform the Customer of any impact on the Managed Services and shall not be liable for any loss or delay caused by the exercise of this right.

13.5 Altinet shall comply with, and shall procure that each of the sub-contractors complies with, the Customer's procedures for vetting personnel in respect of all Altinet personnel employed or engaged in the provision of the Services.

## 14. CUSTOMER'S OBLIGATIONS

14.1 The Customer shall (unless expressly agreed otherwise in a Statement of Work):

(a) provide Altinet with:

(i) an outbound internet connection and/or assistance in setting up a Virtual Private Network connection to Altinet's systems;

(ii) a network map or other diagram showing the current infrastructure including software, hardware and any applicable network services.

(iii) Timely approval of any Success Criteria Document prior to the start of any Acceptance testing.

(iv) all necessary co-operation in relation to this agreement; and

(v) all necessary access to such information as may be reasonably required by Altinet, in order to provide the Services, including Customer Data, security access information, and (subject to providing any confidentiality undertakings reasonably required by the Customer) software interfaces to the Customer's other business applications;

(b) provide such personnel assistance, including the Customer Account Team and other Customer personnel, as may be reasonably requested by Altinet from time to time. The Customer shall use reasonable endeavours to ensure continuity of its personnel assigned to this agreement;

(c) appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to this agreement. The Customer shall use reasonable endeavours to ensure continuity of the Customer's Project Manager, but has the right to replace him from time to time where reasonably necessary in the interests of the Customer's business;

(d) comply with all applicable laws and regulations with respect to its activities under this agreement, including those set out in clause 27; and

(e) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Altinet may adjust any timetable or delivery schedule set out in this agreement as reasonably necessary.

(f) not allow any third party (unless an authorised representative of Altinet) to access, modify, maintain or repair any part of the Software or the Hardware or any Work Product provided as part of the Works.

(g) obtain and shall maintain all necessary licences, consents, and permissions necessary for Altinet, its contractors and agents to perform their obligations under this agreement, including without limitation the Managed Services.

(h) ensure that its network and systems comply with the relevant specifications provided by Altinet from time to time; and

(i) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Altinet's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

(j) Ensure that it complies with any third-party notices or terms and conditions that are attached to any of the Managed Services Software and/or Hardware.

## 15. WARRANTIES

15.1 The Customer warrants, represents and undertakes that:

(a) Any Product Scoping Document that the Customer provides shall be accurate as it will be relied upon by Altinet in scoping the Services to be provided. Inaccuracies may result in invalid quotes and additional cost to the Managed Services. In the event of such an inaccuracy Altinet will advise the Customer of the impact or necessary changes to the Managed Services and any prices or other aspects that may already be agreed.

(b) it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Customer;

(c) it has the authority to grant any rights to be granted to Altinet under this agreement, including the right to provide the Software and Hardware to Altinet as indicated in this agreement and for the same to be used in the provision of the Services and otherwise in connection with this agreement;

(d) it shall comply with and use the Services in accordance with the terms of this agreement and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws;

(e) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to license to Altinet, any materials reasonably necessary for the fulfilment of all its obligations under this agreement, including any third-party licences and consents in respect of any Customer Software; and

(f) Altinet's possession and use in accordance with this agreement of any materials (including third-party materials supplied by the Customer to Altinet) shall not cause Altinet to infringe the rights, including any Intellectual Property Rights, of any third party.

15.2 Altinet warrants, represents and undertakes that:

(a) it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of Altinet;

(b) it owns, or has obtained valid licences, consents, permissions and rights to enable Altinet to comply with this agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this agreement including for the Customer's use and receipt of the Services, and Altinet shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;

(c) it shall comply with all applicable laws and regulations in performing its obligations under this agreement;

(d) Altinet's IT Systems comply with applicable Cybersecurity Requirements.

(e) the Customer's possession and use in accordance with this agreement of any materials (including third-party materials) supplied by Altinet to the Customer shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party;

(f) any software, system or telecommunications provided by or on behalf of Altinet shall be tested for Viruses and any identified Viruses deleted in accordance with Good Industry Practice before the date of delivery or use of such software, systems or telecommunications by Altinet; and

(g) all personnel and sub-contractors used by Altinet in the performance of this agreement are adequately skilled and experienced for the activities they are required to perform.

## 16. CHARGES AND PAYMENT

16.1 The Customer shall pay Set-Up Services Fees set out in the relevant Statement of Work for the Set-up Services and the monthly Fees set out in the relevant Statement of Work for the Managed Services.

16.2 Fees for the VAR Products where applicable will be specifically called out in the Statement of Work and are payable annually in advance. VAR Product Fees are non-refundable once incurred unless otherwise stated in this agreement or the Statement of Work.

16.3 The Customer shall reimburse Altinet for all actual, reasonable travel costs and expenses including

airfares, hotels and meals incurred by Altinet in performance of the Set-up Services.

16.4 All amounts and Fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to Altinet's invoice(s) at the appropriate rate.

16.5 Altinet shall invoice the Customer monthly as of the last day of each month for all Services performed by Altinet during that month. If any Service Credits are due then they shall be shown as a deduction from the invoice.

16.6 The Customer shall set up a direct debit for any Charges under this agreement and shall confirm with Altinet or allow Altinet an opportunity to inspect, the relevant payment arrangements within 30 days of commencement of any applicable Statement of Work.

16.7 If the Customer fails to make any payment due to Altinet under this agreement by the due date for payment, then, without limiting Altinet's remedies under clause 23, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above either 0% or Barclays Bank Plc's base rate from time to time (whichever is higher). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

16.8 On expiry or termination of this agreement for any reason, any unpaid Service Credits represent a debt due from Altinet to the Customer.

## 17. CHANGE CONTROL

17.1 If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.

17.2 If either party requests a change to the scope or execution of the Services, Altinet shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Fees arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on the terms of this agreement.

17.3 If Altinet requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it. If the Customer requests a change pursuant to the terms of this agreement, Altinet shall not unreasonably withhold or delay consent to it.

17.4 If either party wishes the other party to proceed with the relevant change referred to in clause 3, Altinet has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, the Project Plan and any other relevant terms of this agreement to take account of the change.

## 18. SERVICE REVIEW AND GOVERNANCE

18.1 The Customer's Project Manager and Altinet's Project Manager shall have regular review meetings (**Review Meetings**) to monitor and review the performance of this agreement, to discuss any changes proposed in accordance with clause 17 and to discuss the Service Level Arrangements. These meetings shall be minuted by Altinet's Project Manager and copies of those minutes shall be circulated to, and approved by, both parties.

18.2 Before each Review Meeting, the Customer's Project Manager shall notify Altinet's Project Manager, and vice versa, of any problems relating to the provision of the Services for discussion at the Monthly Meeting. At each such meeting, the parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next Monthly Meeting.

18.3 Each Review Meeting shall be attended by senior representatives of the Customer and of Altinet,

together with the Customer's Project Manager and Altinet's Project Manager.

18.4 The Customer and Altinet shall review the Service Level Arrangement at each Review Meeting and shall, in accordance with clause 17, agree modifications to reflect changes in the Customer's requirements for the Managed Services.

## 19. PROPRIETARY RIGHTS

19.1 The Customer acknowledges and agrees that, as between the parties, Altinet and/or its licensors own all Intellectual Property Rights in the Work Product and in all other materials connected with the Services and/or developed or produced in connection with this agreement by Altinet, its officers, employees, sub-contractors or agents. Except as expressly stated in this agreement, this agreement does not grant the Customer any rights to such Intellectual Property Rights.

19.2 Altinet acknowledges and agrees that the Customer owns and retains all rights, title and interest in and to the Customer Data. Altinet shall have no rights to access, use or modify the Customer Data unless it has the prior written consent of the Customer.

19.3 Altinet shall own and retain all rights, title and interest in and to the Work Product. Altinet shall be deemed to be the author of all Work Product. Customer waives any and all moral rights (including any rights of attribution) in and to the Work Product. To the extent that any Intellectual Property Rights in the Work Product do not automatically vest in Altinet, the Customer (by way of present assignment of future rights where appropriate) assigns absolutely and irrevocably (and shall procure that any relevant employee, agent or sub-contractor assigns absolutely and irrevocably) to Altinet with full title guarantee all rights, title and interest that the Customer (and any of its employees, agents or sub-contractors) may have or may in future acquire in all Work Product, including all Intellectual Property Rights in any Work Product, for the full term of such rights throughout the world.

19.4 In addition to clause 3 the Customer grants to Altinet a perpetual, irrevocable, sub-licensable, non-transferable, non-exclusive, royalty-free and worldwide licence to any Invention which is created during or as a result of the Services and the Work Product.

19.5 At Altinet's cost and expense, the Customer shall execute all documents and take all actions necessary or reasonably requested by Altinet to document, obtain, renew, maintain, perfect or assign Altinet's rights to the Work Product. Customer shall also cause its employees, agents and sub-contractors to execute such documents and take such actions as described in this clause 5 at Altinet's cost. Customer shall not challenge (and shall procure that its employees, agents and sub-contractors shall not challenge) the validity of Customer's (or any of its employees', agents' or sub-contractors') assignment of rights in the Work Product to Altinet in accordance with clause 20.3. All such Work Product shall be deemed to be the confidential, proprietary and trade secret information of Altinet under and subject to the provisions of this clause 19.

19.6 Altinet grants to the Customer a license for the term of this agreement which is not sub-licensable, and is revocable, non-transferable, non-exclusive, royalty-free, worldwide licence to use all of Altinet's Intellectual Property Rights as incorporated by Altinet into the Managed Services solely in connection with the Customer's (and its permitted sub-licensees') use of the Managed Services in accordance with this agreement.

19.7 The Customer grants to Altinet a revocable, sub-licensable, non-transferable, non-exclusive, royalty-free, worldwide limited licence for the term of this agreement to use, exploit, copy, reproduce, manufacture, sub-license, modify, improve, enhance and make derivative works of the Customer's Intellectual Property Rights and the physical Work Product solely to the extent necessary to enable Altinet to comply with its obligations under this agreement.

19.8 Altinet shall not disclose to the Customer or use in its work any trade secrets or confidential information of a third party which Altinet is not lawfully entitled to disclose or use in such manner. Altinet shall not use any equipment, supplies, facilities, computer code, work product, inventions or materials of any other third party (**Third-Party Materials**) in any Work Product or in Altinet's performance under this agreement unless:

- (a) Altinet has the full right and authority to do so without violating any rights of any third party;



(b) Altinet has obtained all necessary rights to enable it to perform its obligations under this agreement and grant the rights granted pursuant to this agreement, and to permit the Customer to utilise the Third-Party Materials as contemplated under this agreement, in each case at no additional cost or expense to the Customer;

(c) the Customer's use of such Third-Party Materials will not restrict or impair in any manner its use of the Work Product or subject the Customer to any obligation or liability; and

(d) such Third-Party Materials are specifically identified to the Customer in writing in advance of any use and the Customer has agreed in writing to such use.

19.9 Altinet grants to the Customer a license for the term of this agreement which is personal, non-transferrable, non-exclusive, royalty-free, worldwide licence to use such Third-Party Materials as are incorporated in the Work Product solely in connection with the Customer's (and its permitted sub-licensees') use of the Work Product in accordance with this agreement.

19.10 Each party reserves all rights not expressly granted or transferred pursuant to this agreement.

19.11 Notwithstanding the foregoing or any clause to the contrary in this agreement, any Third Party Software provided under this agreement (including the VAR Products) are supplied on their own terms and according to the terms and conditions that are attached to each product.

## 20. ALTINET CONFIDENTIALITY

20.1 The provisions of this clause 20 shall not apply to any Confidential Information that:

(a) is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 20);

(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) the receiving party proves to the reasonable satisfaction of the disclosing party was developed by or for the receiving party independently of the information disclosed by the disclosing party.

20.2 Each party shall keep the other party's Confidential Information confidential and shall not:

(a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement (**Permitted Purpose**); or

(b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 20.

20.3 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 Representatives in violation of the terms of this agreement.

20.4 The Customer:

(a) acknowledges and agrees that Altinet's Confidential Information includes any designs, plans, software or other materials created by Altinet in connection with the Services; and

(b) agrees not to make use of any such designs, plans, software or other materials for any purpose other than receipt of the Services.

20.5 Altinet acknowledges and agrees that the Customer Data is the Confidential Information of the Customer.

20.6 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

(a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

(b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause

20.7 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 (including any relevant securities exchange) or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 7, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

20.8 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

20.9 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 to be implied from this agreement.

20.10 The provisions of this clause 20 shall continue to apply after expiry or termination of this agreement for any reason.

20.11 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

## 21. LIMITATION OF LIABILITY

21.1 This clause 21 sets out the entire financial liability of Altinet (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of this agreement;
- (b) any use made by the Customer of the Services; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

21.2 Except as expressly provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. Altinet shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Altinet by the Customer in connection with the Services, or any actions taken by Altinet at the Customer's direction; and
- (b) all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this agreement.

21.3 Nothing in this agreement excludes or limits the liability of Altinet for:

- (a) death or personal injury caused by Altinet's negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot lawfully be excluded or limited.

21.4 The Service Level Arrangements state the Customer's full and exclusive right and remedy, and Altinet's only obligation and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.

21.5 Subject to clause 3 and clause 21.4:

- (a) Altinet shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
- (b) Altinet's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the affected Services during the twelve (12) months preceding the date on which the claim arose.

## 22. TERM AND TERMINATION

22.1 This agreement shall commence on the Effective Date. Unless terminated earlier in accordance with this clause 22, this agreement shall continue in force for the Initial Term and thereafter shall automatically renew for successive and consecutive twelve (12) month periods (each an “**Extended Term**”). The agreement will automatically renew at the end of each Extended Term, unless the Customer gives written notice to Altinet, not later than ninety (90) calendar days before expiry of the Initial Term or the relevant Extended Term, to terminate this agreement. Altinet may decline to renew this Agreement or any part of the Services for any additional Extended Term and shall endeavour to give the Customer at least 60 calendar days’ notice of such cancellation in advance of the commencement of any affected Extended Term.

22.2 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies and subject to clause 23, the Customer may terminate this agreement immediately on written notice to Altinet within the first 20 Business Days of the Initial Term. In the event of termination by the Customer under this sub-clause 2, Altinet will use commercial endeavours to return any pre-paid and unearned fees including where possible any fees for third party software which Altinet may be able to recover. Unless otherwise agreed, Altinet shall hold on trust for the Customer any such refunds or reimbursements from third parties that it is able to acquire; provided that on any such termination the Customer shall, without prejudice to any accrued rights or obligations as at that time, be obliged to pay the remainder of any and all outstanding Charges up until the date of termination.

22.3 Without prejudice to any other right or remedy available to it, and subject to clause 23, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party breaches any of the terms of clause 20;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) the holder of a qualifying floating charge over any of the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over any of the assets of the other party or a receiver is appointed over any of the assets of the other party;
- (j) 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;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 3(d) to clause 22.3(i) (inclusive);
- (l) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial

part of its business; or

(m) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

22.4 Without prejudice to any other right or remedy available to it, and subject to clause 23:

(a) the Customer may terminate this agreement with immediate effect by giving written notice to Altinet if:

(i) Altinet commits a series of breaches of this agreement which are each individually not material but which occur sufficiently often within a sufficiently short period to have, in aggregate, the effect of being a material breach; or

(ii) Altinet breaches any of the terms of clause 11 or clause 13; or

22.5 The party not affected by a continuing Force Majeure Event may terminate this agreement in accordance with clause 1.

22.6 Either party may terminate this agreement in accordance with clause 4.

22.7 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after expiry or termination of this agreement shall remain in full force and effect.

22.8 Expiry or termination of this agreement for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at expiry or termination.

22.9 On expiry or termination of this agreement for any reason:

(a) Altinet shall immediately cease provision of the Set-Up Services, Managed Services and Maintenance Services but may provide Transition Services for a further period in accordance with clause 2;

(b) (subject to clause 11) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party and the Customer shall cease to use any IP address licensed to the Customer by Altinet; and

(c) if Altinet receives, no later than ten days before the effective date of the expiry or termination of this agreement for any reason, a written request for the delivery to the Customer of the most recent backup of the Customer Data, Altinet shall use reasonable commercial endeavours to deliver the backup to the Customer within 30 days, or such longer time period as may be reasonable in the circumstances, of its receipt of such a written request in the format stored, or in a format as otherwise reasonably requested by the Customer at the cost of the Customer, provided that the Customer has at that time paid all fees and charges outstanding at (and including any resulting from) expiry or termination (whether or not due at the date of expiry or termination). Once the agreement has expired or Altinet has, at the Customer's request, delivered to the Customer the most recent backup of the Customer Data (as applicable), Altinet shall (subject to clause 11) promptly expunge from Altinet's System and otherwise destroy or dispose of all of the Customer Data in its possession or control. The Customer shall pay all reasonable costs and expenses incurred by Altinet in returning and disposing of Customer Data and expunging it from Altinet's System.

22.10 Without prejudice to any of its other rights, Altinet shall be entitled to suspend the supply of the Managed Services or any service under this agreement where Altinet has a right to terminate the agreement or any particular service. Such suspension shall be without waiver of any rights, nor shall Altinet be liable for any losses suffered by the Customer in relation to such suspension so long as that suspension is in accordance with any other right of Altinet to terminate the agreement or any part thereof.

22.11 If a party is required by any law, regulation, or government or regulatory body (**Regulatory Requirement**) to retain any documents or materials which it would otherwise be obliged to return or destroy under clause 9(c), it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. Clause 21 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.

## 23. EXIT ASSISTANCE AND TRANSFER OF ASSETS

23.1 Altinet shall, on request from the Customer at any time after the expiry of six months from the Acceptance Date, prepare or update a detailed plan for the orderly transition of the Services from Altinet to the Customer or its nominated Replacement Supplier (**Exit Plan**).

23.2 The Customer may, at any time before expiry or termination of all or any part of this agreement for any reason request Altinet to provide the Transition Services or otherwise to offer reasonable assistance in transitioning the Services to the Customer or a Replacement Supplier (by providing the Transition Services). Altinet shall, in consideration of a reasonable fee (to be agreed in advance), provide such Transition Services for a maximum period of three months, or until expiry or termination of all or any part of this agreement for any reason in accordance with clause 22, whichever is later.

23.3 On expiry or termination of all or any part of this agreement for any reason Altinet shall promptly produce a list of the Customer-site Equipment and the Transferring Contracts. Altinet shall sell, and the Customer shall buy, the Customer-site Equipment for net book value, calculated in accordance with Altinet's reasonable then-current depreciation policy. Title to such Customer-site Equipment shall pass to the Customer on payment for the same.

23.4 Altinet and Customer shall co-operate to procure the novation or assignment to the Customer and/or Replacement Supplier of the Transferring Contracts.

23.5 The Customer shall:

(a) accept assignments from the Altinet or join with Altinet in procuring a novation of each Transferring Contract; and

(b) once a Transferring Contract is novated or assigned to the Customer or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract or, as applicable, procure that the Replacement Supplier does the same.

## 24. FORCE MAJEURE

24.1 Neither party shall have any liability to the other under this agreement if it is prevented from, or delayed in, performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, except to the extent that it could reasonably have avoided such circumstances by (in the case of Altinet) fulfilling its obligations in accordance with clause 3 or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), including strikes, lock-outs or other industrial disputes (including any industrial disputes involving the workforce of Altinet), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a **Force Majeure Event**), provided that:

(a) the other party is notified of such an event and its expected duration; and

(b) it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for three consecutive months or more, the party not affected may terminate this agreement by giving not less than 14 days' written notice to the other party.

24.2 If the Force Majeure Event results in the suspension of all or any part of the Services, then the Customer shall not be obliged to pay the relevant Fees until such time as the Force Majeure Event shall have ceased to have effect and the Services recommence in accordance with this agreement.

24.3 Altinet shall have in place an appropriate Disaster Recovery Plan to ensure that it is able to comply with its obligations under this agreement and shall maintain, update and test such Disaster Recovery Plan and notify full details of its then current Disaster Recovery Plan to the Customer no less frequently than

every 12 months. If such Disaster Recovery Plan is invoked, the cost and expense of invoking and executing such Disaster Recovery Plan shall be borne by Altinet.

## 25. AUDIT

25.1 For the term of this agreement, and for a period of seven years from expiry or termination of this agreement for any reason, Altinet shall maintain full and accurate records in accordance with Generally Accepted Accounting Principles, in an agreed form, of all charges, prices, costs and expenses associated with and invoiced in respect of the Services and its performance against the Service Level Arrangements and all processing of data under this agreement.

25.2 In the event that any audit reveals an underpayment by the Customer, the Customer shall be required to pay to Altinet the difference between the price actually paid by the Customer and the amount that should have been paid had the excess usage been taken into account at that time.

25.3 For the term of this agreement, Altinet shall ensure that monthly management accounts are produced in addition to its annual audited accounts and shall, if requested, promptly provide to the Customer copies of such records and accounts and any other financial information reasonably requested by the Customer.

25.4 Altinet shall, on reasonable advance written notice:

(a) allow the Customer, any designated auditors of, or other advisers to, the Customer, and any regulators of the Customer to access any of Altinet's (and any of Altinet's sub-contractors') premises, personnel, relevant records and systems used by Altinet (or any of its sub-contractors) in the provision of the Services (including Altinet's System and its (or any of its sub-contractors') data processing facilities) as may be reasonably required to verify that the Services are being provided in accordance with this agreement and the adequacy of Altinet's (and any of Altinet's sub-contractors') financial standing; and

(b) provide to the Customer and the auditors of the Customer the report of the auditor of Altinet (and any relevant sub-contractor) under SSAE 16 (Statement on Standards for Attestation Engagements No. 16, published by the American Institute of Certified Public Accountants (AICPA)), which auditor's report shall be at a minimum an SOC 1 (Service Organization Control 1) Type II report or, if such a SOC 1 Type II report is not available, the information that would be required by the management of Altinet (or relevant sub-contractor) in connection with producing that report.

25.5 The Customer shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt Altinet (or any of its sub-contractors) or delay the provision of any of the Services by Altinet.

25.6 Subject to the Customer's obligations of confidentiality, Altinet shall provide (and procure that its sub-contractors provide) the Customer (and its auditors and other advisers) with all reasonable co-operation, access and assistance in relation to each audit.

25.7 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause.

## 26. ANTI-BRIBERY AND SLAVERY

26.1 Altinet shall:

(a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (**Relevant Requirements**);

(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(c) have and maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and clause 1(b), and shall enforce them where appropriate;

(d) promptly report to the Customer any request or demand for any undue financial or other advantage

of any kind received by Altinet in connection with the performance of this agreement;

(e) immediately notify the Customer (in writing) if a foreign public official becomes an officer or employee of Altinet or acquires a direct or indirect interest in Altinet (and Altinet warrants and represents that it has no foreign public officials as officers or employees or direct or indirect owners at the date of this agreement);

(f) On reasonable request Altinet shall certify to the Customer in writing signed by an officer of Altinet, compliance with this clause 26 by Altinet and all persons associated with it and all other persons for whom Altinet is responsible under clause 1(e). Altinet shall provide such supporting evidence of compliance as the Customer may reasonably request.

(g) 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;

(h) have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance; and

(i) 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.

26.2 Breach of this clause 26 shall be deemed a material breach under clause 3(b).

26.3 For the purpose of this clause 26, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act, and section 8 of that Act respectively. For the purposes of this clause 26 a person associated with Altinet also includes any sub-contractor of Altinet.

## 27. WAIVER

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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## 28. SEVERANCE

28.1 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.

28.2 If one party gives notice to the other of the possibility that 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.

## 29. ENTIRE AGREEMENT AND VARIATION

29.1 This agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

29.2 Each party acknowledges that in entering into this agreement 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 this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

29.3 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 30. ASSIGNMENT

30.1 Altinet may at any time assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under this agreement without the consent of the Customer.

30.2 The Customer shall not, without the prior written consent of Altinet, assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights or obligations under this agreement.

## 31. NO PARTNERSHIP OR AGENCY

31.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, except as expressly provided, or pursuant to clause 2, and nothing shall constitute any party the agent of another party nor authorise any party to make or enter into any commitments for or on behalf of any other party.

31.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 32. THIRD PARTY RIGHTS

Except as expressly provided elsewhere in this agreement, no one other than a party to this agreement, its successors and permitted assignees, shall have any right to enforce any of its terms.

## 33. RIGHTS AND REMEDIES

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.

## 34. NOTICES

34.1 Any notice or other communication required to be given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first class post or other next Business Day delivery service at its registered office.

34.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery



34.3 This clause 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. For the purposes of this clause 34, "writing" shall not include e-mail.

## 35. DISPUTE RESOLUTION

35.1 If a dispute arises under or in connection with this agreement (**Dispute**), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 35.

35.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five Business Days):

(a) appoint a representative who has authority to settle the Dispute and is at a higher management level, where one exists, than the person with direct responsibility for the administration of this agreement (**Designated Representative**); and

(b) notify the other party of the name and contact information of its Designated Representative.

35.3 Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).

35.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Unless otherwise agreed between the parties within 14 Business Days of notice of the decision to enforce mediation, the mediator will be nominated by CEDR.

35.5 Notwithstanding any other provision of this agreement, a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.

## 36. GOVERNING LAW AND JURISDICTION

36.1 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.

36.2 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).