

1. DEFINITIONS

1.1 In this Agreement unless the context otherwise requires the following words and expressions have the following meanings:

“Acceptance Date” has the meaning given to it in Clause 2.6;

“Additional Services” any services requested by the Customer outside of the Onboarding Service and the Managed Services or which require Air IT to visit a Customer Site unless such visit is covered by the Managed Services for the Call-Out charge in Schedule 1;

“Agreed Sub-Processor” any sub-processor engaged by Air IT to Process Customer Personal Data for the purposes of this Agreement (including any Third Party Providers);

“Agreement” the front page signed by the Customer, these terms and conditions and all Schedules attached to the front page;

“Air IT Equipment” any equipment, including tools, systems, cabling or facilities provided by Air IT or its sub-contractors and used to provide the Services but not purchased, leased, loaned or hired by the Customer;

“Air IT System” the information and communications technology system used by Air IT in performing the Services including the Hardware, the Software, the Customer-side Equipment and communications links between the Hardware and the Customer-side Equipment and the Customer’s Operating Environment;

“Business Day” a day other than a Saturday, Sunday or Public Holiday in England;

“Change Control Procedure” the procedure set out in Clause 8;

“Confidential Information” any and all information acquired by either Party about the other Party’s business or technology and/or given by one Party to the other Party and/or generated by either Party from the other Party’s confidential information;

“Customer Account Team” the individuals appointed by the Customer from time to time who shall serve as Air IT’s primary contacts for Air IT’s activities under this Agreement;

“Customer Personal Data” any information that is provided by the Customer to Air IT as part of the Customer’s use of the Services and which is Personal Data;

“Customer Site” any premises occupied by the Customer at which it receives the Services;

“Customer’s Operating Environment” the Customer’s telecommunications environment (consisting of hardware, software and telecommunications networks) used by the Customer for the operation of its business and which interfaces with the Air IT System in order for the Customer to receive the Services but excluding the Customer-side Equipment;

“Customer’s Project Manager” the member of the Customer Account Team appointed in accordance with Clause 5 who at the Effective Date is named in Schedule 3 Paragraphs 2.1 and 2.2;

“Customer-side Equipment” any equipment, systems, cabling or facilities located at a Customer Site and provided by the Customer and used directly or indirectly by Air IT in the supply of the Services;

“Data Protection Legislation”

(a) from the Effective Date until 24 May 2018, the Data Protection Act 1998;

(b) from 25 May 2018 and for the remainder of the Term, the General Data Protection Regulation (EU) 2016/679;

(c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and

(d) any legislation that replaces or converts into English law the General Data Protection Regulation (EU) 2016/679 or the proposed Regulation on Privacy and Electronic Communications, including as a consequence of the United Kingdom leaving the European Union;

and references to **“Data Subjects”**, **“Personal Data”**, **“Process”**, **“Processed”**, **“Processing”**, and **“Data Processor”** have the meanings set out in, and will be interpreted in accordance with:

(i) in respect of processing undertaken on or before 24 May 2018, the Data Protection Act 1998;

(ii) in respect of processing undertaken on or after 25 May 2018, the General Data Protection Regulation (EU) 2016/679; and

(iii) in respect of processing undertaken on or after the date on which legislation comes into force in England that replaces or converts into English law the General Data Protection Regulation (EU) 2016/679, that legislation;

“Effective Date” the date of this Agreement;

“Fees” all charges relating to the connection and usage of the Services and all Third Party Services levied by Air IT and/or each Third Party Provider as notified to the Customer in the Proposal, or set out in this Agreement (including the fees payable to Air IT in accordance with Clause 7 and Schedule 3 Paragraphs 1.1 and 1.2), or as otherwise notified to the Customer from time to time by either Air IT or the relevant Third Party Provider;

“Hardware” all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) used by Air IT to deliver the Services to the Customer;

“Initial Term” the period from the Effective Date until the first anniversary of the Effective Date;

“Intellectual Property Rights”

(a) all or any intellectual property rights or equivalent including patents, trademarks, service marks, trade names, design rights (whether or not registered), domain names, copyright, rights in social media accounts, rights in

designs, rights in inventions, rights in get up, logos, goodwill and rights to goodwill, database rights, rights in data and topography rights;

(b) all applications for any of the rights in (a) above, and the right to apply for registration of such rights, all renewals or extensions of each right in (a) above, all rights that derive priority from any of the rights in (a) above and all rights from which each of the rights in (a) above derives priority;

(c) know-how, trade secrets, confidential information, technical information, customer and supplier lists and any other proprietary knowledge and/or information of whatever nature and however arising; and

(d) all accrued rights of action in relation to any of the rights in (a), (b) and (c) above and all rights to sue for past infringements or unauthorised use of such rights, rights to sue for passing off and all rights to claim and retain damages or seek an account of profit, together with any rights or types of protection of the same or similar nature to those listed above which subsist anywhere in the world whether before or after the date of this Agreement;

“Liability” any actions, awards, costs, claims, damages, losses, demands, expenses, judgements, interest, penalties, proceedings and any other liabilities, whether arising under contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise;

“Maintenance” such error corrections, fixes, updates and upgrades that Air IT may provide or perform as part of or with respect to the Managed Services provided to the Customer under this Agreement as described in Schedules 2 and/or 3 but excluding services that are specifically excluded in this Agreement and excluding error corrections, fixes, updates and upgrades to any software or hardware within the Customer's Operating Environment or the Customer-side Equipment whose maintenance is the responsibility of a Third Party Provider or the Customer;

“Managed Services”: the services set out in the Managed Service Specification to be provided by Air IT or procured from Third Party Providers in accordance with this Agreement;

“Managed Services Specification” the specification for the Managed Services as set out in Schedule 1;

“Normal Business Hours” 7.30am to 6.30pm English time on Business Days;

“Onboarding Service” the initial technical assessment, configuration and related work referred to in Schedule 1 to set up the Managed Services to be performed remotely by Air IT unless attendance at any Customer Site is specified in Schedule 3 Paragraph 6;

“Project Plan” the plan to be developed in the planning stage of the Onboarding Service;

“Proposal” Air IT's proposals to meet the Customer's requirements for the Managed Services and annexed at Schedule 3 Paragraph 3;

“Service Level Agreement” the service level arrangements set out in Schedules 2;

“Services” the Onboarding Service, the Managed Services and any Additional Services;

“Software” any software used by Air IT to provide the Services to the Customer whether owned by a Third Party (“Third Party Software”) by the Customer (“Customer Software”) or by Air IT (“Air IT Software”);

“Renewal Period” as defined in Clause 14.1;

“Term” the duration of this Agreement;

“Third Party Services” any services provided by a third party to the Customer and any services which Air IT procures from a third party to provide any of the Services;

“Third Party Provider” any provider of Third Party Services;

“Virus” without limitation any malicious code, Trojan horses, worms and viruses, lock, authorisation key or similar device that impairs or could impair the operation of the Software and/or the Managed Services.

- 1.2 Where any conflict or ambiguity between the terms of these Terms and Conditions and the terms of the Agreement schedules, the relevant term(s) shall prevail over the relevant term(s) in these Terms and Conditions.
- 1.3 In these Terms and Conditions the words “including”, “in particular” and “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”.

2. ONBOARDING SERVICE

- 2.1 In consideration of and subject to payment by the Customer to Air IT of the Onboarding Services Fees, Air IT shall conduct an initial assessment of all relevant Customer Sites, the Customer-side Equipment, the Customer's Operating Environment and Customer's contracts with third parties to produce the Proposal, the Project Plan and the Managed Service Specification. The initial assessment shall be conducted remotely unless in Air IT's sole opinion attendance at any Customer Site is required.
- 2.2 The Customer shall ensure that it communicates to Air IT all its service requirements and provides Air IT with all the information relevant for the purpose of creating the Proposal, the Project Plan and the Managed Service Specification and to enable Air IT to establish whether Air-IT is able to provide the Services in accordance with the terms of this Agreement. In addition, throughout the Term, the Customer shall be responsible for providing Air-IT with all information reasonably required insufficient detail for the purposes of recommending, advising, establishing, setting up and providing the Services under this Agreement.

- 2.3** Air IT and the Customer shall cooperate in implementing the Managed Services in accordance with the implementation provisions of the Project Plan.
- 2.4** Air IT shall use reasonable endeavours to meet the performance dates set out in Schedule 3 Paragraphs 4 and 5 but any such dates shall be estimates only, are subject to change by Third Party Providers and time shall not be of the essence.
- 2.5** When Air IT considers that the Managed Services are ready for activation it shall notify the Customer. Within 5 days of such notification the Customer shall review the operation of the Managed Services, to confirm that they function in material conformance with the Managed Service Specification. If the Managed Services fail in any material respect to conform with the Managed Service Specification, the Customer shall give Air IT a detailed description of such non-conformance in writing within 5 days and Air IT shall use reasonable endeavours to correct such non-conformance within a reasonable time and the provisions of this Clause shall apply up to three additional times. If Air IT is unable to correct the non-conformance after 3 attempts either Party may terminate this Agreement without further Liability to the other.
- 2.6** If the Customer does not provide any written comments by the fifth day after the notification referred to in Clause 2.5 or if the Managed Services are shown before that date to conform with the Managed Service Specification, then the Managed Services shall be deemed to be accepted as of that date ("Acceptance Date").
- 3. SERVICE PROVISION**
- 3.1** In consideration of and subject to payment by the Customer to Air IT of the Fees, Air IT shall provide and/or make available from Third Party Providers as the case may be the Managed Services as from the Acceptance Date until expiry or termination of this Agreement.
- 3.2** The Service Level Agreement shall apply to those of the Managed Services provided by Air IT from the start of the first complete month occurring 20 days after the Acceptance Date.
- 3.3** The Customer shall be responsible for securing all licenses and consents necessary to enable Air IT to supply the Services including installation of any Air IT Software, Air-IT Equipment and Hardware.
- 3.4** The Customer shall not store, distribute or transmit any material through or via the Managed Services, the Customer's Operating Environment, the Customer-side Equipment, and/or any Software or Hardware that:
- 3.4.1** is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
 - 3.4.2** facilitates illegal activity;
 - 3.4.3** depicts sexually explicit images;
 - 3.4.4** causes, allows or enables any bulk or mass unsolicited email messages; or
 - 3.4.5** promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities.
- 3.5** The Customer shall procure that all passwords for access to and /or use of any of the Managed Services shall be kept confidential and inaccessible to third parties, that passwords are re-set after any actual or suspected security alerts and that the Customer's Operating Environment, the Customer-Side Equipment and the Hardware are, and shall remain for the Term, adequately protected and secure from unauthorised access by third parties.
- 3.6** The Customer shall be and remain responsible for all use of the Services or any part of them and all Third Party Services, including any use by third parties, whether fraudulent or invited by the Customer. The Customer shall have Liability for all fraudulent use made of, from or via the Services, all Third Party Services, the Customer's Operating Environment, the Customer-Side Equipment and/or the Hardware and/or all its passwords relating to access or use of any of the foregoing.
- 3.7** The Customer shall not provide the Services or facilitate them directly or indirectly to, or allow them to be used by, third parties.
- 3.8** If required by Air IT the Customer shall allow Air IT to install monitoring software on the Customer-Side Equipment, the Hardware and/or in the Customer's Operating Environment to enable Air IT to conduct remote monitoring and diagnostics and shall ensure that such software remains installed throughout the Term. Additionally, Air IT reserves the right to:
- 3.8.1** modify the Air IT System, the Air IT Hardware, Air IT's network, system configurations or routing configuration; or
 - 3.8.2** modify or replace any Hardware or Software in Air IT's network or in equipment used to deliver any services over its network.
- 3.9** Where the Managed Services include Maintenance by Air-IT of Hardware, Customer-side Equipment or Software this shall be specified with relevant service levels in Schedule 2 and is based on normal usage of the Customer's Operating Environment and performance and capacity assessed by Air IT as part of the installation and configuration. Where the Customer usage of or demand on the Customer's Operating Environment increases or varies or Hardware or Customer-side Equipment is aged or well-used Air IT shall use reasonable endeavours to provide the agreed Maintenance but cannot guarantee to fix all errors, may replace or repair the same with re-conditioned parts or equipment and/or require the Customer to purchase new Hardware and/or increased maintenance services, and/or may increase the Fees or reduce service levels. The Customer shall notify Air IT immediately of any fault or defect with any of the

equipment that has been provided by Air IT under this Agreement, shall allow Air IT access to such equipment at any time for inspection and/or repair or replacement purposes and shall not permit the equipment to be repaired, replaced or tampered with by anyone other than Air IT without Air IT's prior written consent.

3.10 The Customer will indemnify, keep indemnified and hold harmless Air IT in full and on demand from and against all liabilities (including any tax liability), direct, indirect or consequential losses, damages, claims, proceedings or legal costs (on an indemnity basis), judgments and costs (including costs of enforcement) and expenses which Air IT incurs or suffers directly or indirectly in any way whatsoever in relation to:

3.10.1 Either party's failure to inform or consult any employee as required under Regulation 13 of TUPE;

3.10.2 The termination of employment of any person employed by the Customer; and

3.10.3 Acts or omissions of either party in relation to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

4. AIR IT'S OBLIGATIONS

4.1 Air IT warrants that those of the Services provided by Air IT will be performed with all reasonable skill and care, in accordance with the terms of this Agreement and substantially in accordance with the Managed Service Specification.

4.2 The warranty in Clause 4.1 above shall not apply to the extent of any non-conformance that is caused by use of the Services contrary to Air IT's instructions or in breach of this Agreement by the Customer.

4.3 Subject to Clause 4.2 if the Services do not conform with the warranty in Clause 4.1 Air IT will, 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 warranty in Clause 4.1.

4.4 Air IT does not warrant that the Customer's use of the Services will be uninterrupted or error free.

4.5 This Agreement shall not prevent Air IT 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.

4.6 Air IT shall coordinate and manage the Third Party Providers but shall not be responsible or have Liability for any maintenance and support of software, hardware, utilities and/or facilities provided and maintained by Third Party Providers unless specified in Schedule 1. Air IT shall use reasonable endeavours to cooperate with any person who provides software or hardware, utilities or facilities

to the Customer provided that Air IT shall have no obligations or Liabilities in connection with the use, capability, availability or operation of such software, hardware, utilities or facilities responsibility for which shall remain with the supplier of the same. All Third Party Services are provided subject to the relevant Third Party Provider's terms and conditions, including fees, as notified to the Customer prior to commencement of such Third Party Services (and with which the Customer agrees to comply) and may be varied, suspended and/or terminated by such Third Party Providers.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall provide Air IT with all necessary cooperation in relation to this Agreement and all necessary access to such information as may be reasonably required by Air IT in order to render the Services.

5.2 The Customer shall provide a Customer Account Team and other personnel as may be reasonably requested by Air IT from time to time. The Customer Account Team shall consist of the personnel listed in Schedule 3 Paragraph 2.2. The Customer shall use reasonable endeavours to ensure continuity of its personnel assigned to this Agreement.

5.3 The Customer shall appoint the Customer's Project Manager who will be Air IT's first point of contact, named in Schedule 3 Paragraph 2.1, and the Customer shall use reasonable endeavours to ensure continuity of the Customer's Project Manager.

5.4 The Customer shall comply with all applicable laws and regulations in respect to its activities under this Agreement, shall use all the Services, Customer's Operating System, Customer-side Equipment and Hardware in accordance with the terms of supply of all Third Party Providers and the terms of this Agreement and in the event of any delay in the Customer's provision of assistance required by Air IT, Air IT may adjust any timetable or delivery schedule as reasonably necessary.

5.5 The Customer shall be responsible at its cost for preparing and maintaining the Customer Sites to enable use of the Services and shall ensure that all Customer-Side Equipment is in good working order and suitable for use of the Services and conform to all applicable legislative and regulatory standards and requirements. The Customer shall ensure that all Customer-Side Equipment and all Hardware supplied to it by Air IT is covered by a warranty from the relevant Third Party Provider. The Customer shall identify to Air IT all third party suppliers of software, hardware, utilities and other facilities comprising the Customer's Operating Environment and shall notify Air IT as soon as practicable of any additional hardware or software that it intends to introduce into the Customer's Operating Environment and any other planned changes to the Customer's Operating Environment and/or the Customer-side Equipment

and/or the Customer Sites including planned outages, Customer Site moves and changes in Third Party Providers. If as a result of any failure to notify Air IT pursuant to this Clause Air IT has to carry out any work, such work shall be paid for by the Customer as an Additional Service.

5.6 The Customer is and shall remain responsible for the Customer's Operating Environment, the Customer-Side Equipment and all Hardware and shall insure the same with a reputable insurance company for its replacement value and shall have Liability for the same in the event of loss or damage, including for any recurring charges payable for the same under the terms of this Agreement.

6. WARRANTIES

6.1 The Customer warrants that:

- 6.1.1** 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;
- 6.1.2** it has the authority to grant any rights to Air IT necessary for Air IT to perform its rights and obligations under this Agreement, including the right to allow use of the Customer's Operating Environment, the Customer-Side Equipment, the Software and Hardware by Air IT in the provision of the Services and otherwise in connection with this Agreement;
- 6.1.3** it will 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 or in breach of the Acceptable Use Policy; and
- 6.1.4** it owns and has obtained valid licences, consents, permissions and rights to use and where necessary to allow Air IT to use any materials reasonably necessary for the fulfilment of its obligations under this Agreement, including any third party licences and consents in respect of any Customer Software or Third Party Software.

6.2 Air IT warrants that:

- 6.2.1** 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 Air IT;
- 6.2.2** it will comply with all applicable laws in performing its obligations under this Agreement;
- 6.2.3** it is and shall remain throughout the Term International Standards Organisation (ISO) 9001 accredited and compliant; and
- 6.2.4** all personnel and sub-contractors used by Air IT in the performance of this Agreement are

adequately skilled and experienced for the activities they are required to perform.

7. FEES

7.1 The Customer shall pay the Onboarding Services Fees as set out in Schedule 3 Paragraph 1.1 by the Effective Date and if the Managed Services are accepted, the Customer shall pay the Fees for the Managed Services set out in Schedule 3 paragraph 1.2 subject to review and variation as provided in Clause 7.6 below. All Additional Services shall be charged on a time and materials basis calculated in accordance with the rates set out in Schedule 3 Paragraph 7. All Fees for Third Party Services shall be subject to variation when varied by the relevant Third Party Provider. All call, usage and/or volume related charges shall be charged to and paid by the Customer at the rates and tariffs charged by and on the data logged or recorded by Air IT or the relevant Third Party Provider.

7.2 The Customer shall reimburse Air IT in accordance with Schedule 3 Paragraph 8 for all actual reasonable travel costs and expenses including subsistence costs incurred by Air IT in the performance of the Services as set out in Schedule 3 Paragraph 3.

7.3 All amounts and Fees referred to in this Agreement are exclusive of Value Added Tax which shall be added to the sum at the then prevailing rate and paid by the Customer.

7.4 Air IT shall invoice the Customer for the Managed Services in accordance with the payment provisions in Schedule 3 Paragraph 1.2 and each invoice shall be paid by the Customer in full in cleared funds by the due date in question by way of direct debit or by way of bank transfer to an account nominated by Air IT and time for payment shall be of the essence. All invoices for other Services shall be payable within 14 days of the date of Air IT's invoice in cleared funds and time for payment shall be of the essence.

7.5 All sums are payable without set-off, counterclaim or withholding (without limiting Air IT's remedies) and if the Customer fails to make any amount payable under this Agreement Air IT may, as well as charging interest under the Late Payment of Debts (Interest) Act 1998, suspend all or any Services until payment has been made in full.

7.6 Air IT may for operational reasons need to increase the Managed Services Fees from time to time (for example, as a result of increases in costs of Third Party Suppliers, or following a service review which identifies a consistent over-utilisation of engineering time against the estimated engineering time calculated to provide the required service). Air IT may increase the Managed Services Fees on giving the Customer one month's prior written notice at any time.

8. CHANGE CONTROL

8.1 If either Party requests a change in the scope or execution of the Services or any of them, Air IT shall within a reasonable time provide a written estimate to the Customer of:

- 8.1.1 the likely time required to implement the change;
 - 8.1.2 any variation of the relevant Fee arising from the change;
 - 8.1.3 the likely impact of the change on the Project Plan; and
 - 8.1.4 any other impact of the change on the Terms of this Agreement.
- 8.2 If Air IT requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 8.3 If the Customer wishes for Air IT to proceed with the change, Air IT has no obligation to do so unless and until the Parties have agreed in writing the necessary variations to the Fees, the Project Plan and any other relevant terms of this Agreement to take account of the change.
- 8.4 All Third Party Services are subject to the Customer's right to receive such Third Party Services or Air IT's continuing right to provide such Third Party Services under its agreement with the relevant Third Party Providers. If any agreement between Air IT and a Third Party Provider terminates and is not simultaneously replaced or renewed such Third Party Service shall cease without any Liability of Air IT to the Customer.
- 8.5 Air IT may from time to time:
- 8.5.1 without notice to the Customer change the Services in order to comply with any applicable safety or legislative requirements; and
 - 8.5.2 subject to the Customer's prior written consent (not to be unreasonably withheld or delayed) change the Services for any other reason not covered by clause 8.5.1, provided that such changes do not materially affect the nature or quality of the Services and where practicable Air IT will give the Customer at least one month's prior written notice of any change.
- 8.6 If the impact of any change required by the Customer is likely to take Air IT more than 5 hours to assess, Air IT may charge for its time spent in assessing the request for the change as an Additional Service.

9. PROPRIETARY RIGHTS

The Customer acknowledges and agrees that as between the Parties Air IT and/or its licensors own all Intellectual Property Rights in all Air IT's pre-existing materials and all deliverables and other reports, documents, materials, techniques, ideas, concepts, trademarks, 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 Air IT in connection with the Services or which relate in any manner to the Services which result from any work performed by Air IT for the

Customer and Air IT hereby grants to the Customer a non-transferable, royalty free licence to use such Intellectual Property Rights solely in connection with the Customer's use of Managed Services during the Term.

10. MAINTENANCE

- 10.1 In consideration of and subject to payment of the Managed Services Fee and with effect from the Acceptance Date for the Term, Air IT shall provide such Maintenance as set out in, and in accordance with, Schedules 2 and 3 as part of and with respect to the Managed Services.
- 10.2 The Customer will fully co-operate with Air IT in diagnosing and correcting any fault in the Managed Services and will ensure that all Customer-side Equipment and all equipment within the Customer's Operating Environment is at all times connected to such telecommunications facilities and a suitable modem or other interface to enable Air IT to access the equipment to provide remote diagnostics testing and/or solutions for any fault or error reported by the Customer and to undertake inspections and preventative maintenance where Air IT reasonably deems this to be appropriate. All Maintenance shall be performed remotely unless in Air IT's sole opinion on-site attendance is required. All on-site attendances shall incur a fee as an Additional Service unless covered by a Call-Out Charge in Schedule 1. The Customer will allow Air IT, its employees, agents and /or sub-contractors full, safe and uninterrupted access to all Customer Sites and/or the Customer's Operating Environment at times to be agreed between the Parties to perform its obligations under this Agreement.
- 10.3 The Customer and Air IT agree that when Air IT's personnel including its agents and sub-contractors, are present on the Customer's premises they shall be fully appraised by the Customer of all rules, regulations and policies relating to such premises including health and safety of personnel.
- 10.4 Maintenance shall not include the diagnosis and rectification of any fault resulting from any of the following which shall be charged as an Additional Service:
- 10.4.1 the improper use, improper operation or neglect of the Customer's Operating Environment or any Customer-Side Equipment Software, equipment via which the Services are accessed or used or faults to any of them caused by a third party or variations in electrical power, lightning, flood, fire, radiation, radio interference or accidental damage;
 - 10.4.2 unauthorised merger of any Software (in whole or in part) with any other software;
 - 10.4.3 the use of the Managed Services via or on equipment other than the Hardware or Customer-Side Equipment;

- 10.4.4** the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by Air IT;
- 10.4.5** any repair, adjustment, alteration or modification of the Managed Services by any person other than Air IT without Air IT's prior written consent;
- 10.4.6** any breach by the Customer of any of its obligations under any maintenance agreement in respect of the equipment from or via which the Managed Services are accessed or used;
- 10.4.7** non-compliance with the Customer's obligations under this Agreement;
- 10.4.8** causes beyond the control of Air IT;
- 10.4.9** any fault arising from failure to operate proper and efficient back up and data recovery procedures in relation to the Customer data other than where and to the extent that the fault arises from any back-ups performed by Air IT as part of any Maintenance supplied by Air IT pursuant to this Agreement;
- 10.4.10** any equipment or software not supplied by Air IT to the Customer and/or any services other than the Managed Services.
- 10.5** If Air IT provides maintenance for any fault that results from any of the circumstances described in Clause 10.4 above, the Customer shall pay for the same as an Additional Service.
- 10.6** The Customer shall not:
- 10.6.1** modify, translate, create or attempt to create derivative copies of or copy the systems or any Air IT Software or Third Party Software used to provide the Services in whole or in part;
- 10.6.2** reverse engineer, decompile, disassemble or otherwise reduce the object code of such systems or software to source code form unless permitted by law; or
- 10.6.3** distribute, sub-licence, assign, share, timeshare, sale, rent, lease, transmit, grant a security in trustee or otherwise transfer such systems or software.
- 10.7** Air IT shall ensure that availability of the Managed Services complies with the service levels set out in Service Level Agreement and shall wherever reasonably practicable give the Customer at least 24 hours' prior written notice of all scheduled interruptions to the Managed Services.
- 11. LIMITATION OF LIABILITY**
- 11.1** Neither party excludes or limits Liability for death or personal injury caused by its negligence, Liability for its fraud or any other Liability which it is not permitted to exclude or limit as a matter of law. Without prejudice the generality of the foregoing, the Customer's Liability for all fraudulent use made of, from or via the Services, all Third Party Services, the Customer's Operating Environment, the Customer-Side Equipment and/or the Hardware and/or all its passwords relating to access or use of any of the foregoing shall be unlimited.
- 11.2** Subject to Clause 11.1 the Liability of each party shall be limited as stated below:
- 11.2.1** the Liability of each party under this Agreement for any one claim or series of linked claims resulting in direct loss of or damage to tangible property of the other party shall not exceed £5,000,000;
- 11.2.2** without prejudice to clauses 11.2.1 and 11.2.2 above, the total aggregate Liability of each party under this Agreement for any direct loss or damage shall not exceed the aggregate of the Fees paid in the period of 12 months immediately preceding the claim (provided that if a claim arises in the first 12 months of this Agreement, the total aggregate Liability shall not exceed the estimated Fees to be paid in the first 12 months of this Agreement).
- 11.3** Subject to 11.1 neither party shall be liable to the other for:
- 11.3.1** loss of profits, or loss of business, or loss of revenue, or loss of goodwill, or loss of anticipated savings (whether direct, indirect or consequential); and/or
- 11.3.2** business interruption and/or loss of opportunity (whether direct, indirect or consequential); and/or
- 11.3.3** indirect or consequential loss or damage.
- 11.4** If a number of defaults give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under this Agreement and there shall be no double recovery.
- 11.5** The Customer shall afford a reasonable opportunity to Air-IT (following notification of the default) in which to remedy any default.
- 11.6** Subject to Clause 11.1 Air IT shall have no Liability for any loss or damage caused by or resulting from:
- 11.6.1** the unauthorised or improper use, operation or neglect of the Customer's Operating Environment, any Customer Side Equipment, Software, or equipment via which the Services or any Third Party Services are accessed or used;
- 11.6.2** unauthorised merger of any Software (in whole or in part) with any other software;
- 11.6.3** the use of the Managed Services via or on equipment other than the Hardware or Customer-Side Equipment;

- 11.6.4** the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by Air IT;
- 11.6.5** the failure by the Customer to implement recommendations in respect of data security and the prevention of the unauthorised or unlawful processing or accidental loss, destruction or damage to data previously advised by Air IT;
- 11.6.6** any repair, adjustment, alteration or modification of the Managed Services by any person other than Air IT without Air IT's prior written consent;
- 11.6.7** any breach by the Customer of any of its obligations under any maintenance agreement in respect of the equipment from or via which the Managed Services are accessed or used;
- 11.6.8** non-compliance with the Customer's obligations under this Agreement;
- 11.6.9** causes beyond the control of Air IT;
- 11.6.10** any fault, problem, claim or issue resulting from a failure to operate proper and efficient back up and data recovery procedures in relation to the Customer data other than where and to the extent that the fault, problem, claim or issue arises from any back-ups performed by Air IT as part of any Maintenance supplied by Air IT pursuant to this Agreement;
- 11.6.11** maintenance of any services other than the Managed Services; or
- 11.6.12** toll fraud.
- 11.7** Subject to Clauses 4.6 and 11.1 Air IT shall have no Liability for any acts or omissions by Third Party Providers, or any unauthorised use of Services.
- 11.8** Except in the case of Liability arising under Clause 11.1 above Air IT shall have no Liability to the Customer unless the Customer shall have served notice of the same upon Air IT within 6 months of the date it became aware of the circumstances giving rise to the Liability or the date when it ought reasonably to have become so aware.
- 11.9** Except as expressly stated in this Agreement all conditions, warranties, terms and undertakings express or implied, statutory or otherwise, in respect of the provision of the Services are hereby excluded to the extent permitted by law.
- 12. CONFIDENTIALITY**
- 12.1** Each Party undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs and technology of the other that it shall have obtained, created or received as a result of the discussions leading to or the entering into or performing its obligations under this Agreement except that which is:
 - 12.1.1** trivial or obvious;
 - 12.1.2** already in its possession other than as a result of a breach of this Clause or any obligation of confidence; or
 - 12.1.3** in the public domain other than as a result of a breach of this Clause or any confidence obligation.
- 12.2** Each Party undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Clause 12.1 above by its employee's agents and sub-contractors.
- 13. DATA PROTECTION**
- 13.1** Both Parties undertake to abide by the requirements of the Data Protection Legislation in respect of Customer Personal Data.
- 13.2** The Customer warrants and represents to Air IT that:
 - 13.2.1** it has all necessary rights to allow Air IT to Process Customer Personal Data as part of the Services and the right to Licence Air IT to receive and hold the Customer Personal Data that it holds, as contemplated by this Agreement, in accordance with the Data Protection Legislation;
 - 13.2.2** such Customer Personal Data contains nothing that is defamatory or indecent; and
 - 13.2.3** all such Customer Personal Data is necessary, accurate and up to date.
- 13.3** The Customer acknowledges that Air IT is reliant on the Customer for direction as to the extent to which Air IT is entitled to use and process the Customer Personal Data. Consequently, Air IT shall not be liable for any claim brought by Data Subject arising from any action or omission by Air IT, to the extent that such action or omission resulted directly from the Customer's instructions.
- 13.4** The Customer hereby authorises Air IT as Data Processor to Process the Customer Personal Data during the Term for the purpose of providing the Services and its obligations under this Agreement.
- 13.5** The Customer authorises Air IT to engage any person as a sub-processor for the Processing of Customer Personal Data. Air IT will inform the Customer of any proposed replacement of, or other material changes to, Agreed Sub-Processors, and give the Customer the opportunity to object to such replacement or changes.
- 13.6** From 25 May 2018, Air IT shall appoint any Agreed Sub-Processors on terms which require those Agreed Sub-Processors to comply with all applicable Data Protection Legislation and which contain no less onerous terms in respect of Processing Personal Data than the terms set out in this clause 13.
- 13.7** Air IT agrees that it shall, to the extent that it processes any Customer Personal Data:
 - 13.7.1** not permit any Processing or transfer of such Customer Personal Data outside of the United

Kingdom and/or the EEA except with the express prior written authority of the Customer:

- 13.7.2** not divulge such Customer Personal Data whether directly or indirectly to any person, firm or company or otherwise without the express prior written consent of the Customer except to those of its employees, agents and subcontractors who are engaged in the processing of such Customer Personal Data and are subject to binding confidentiality obligations or except as may be required by any law or regulation;
- 13.7.3** ensure that each of its employees, agents and subcontractors are made aware of its obligations under this Clause 13 with regard to the security and protection of such Customer Personal Data and take such reasonable steps to maintain the levels of security and protection provided for in this Clause 13;
- 13.7.4** Process the Customer Personal Data only in accordance with written instructions from the Customer. For the purpose of this clause 13.7.4, the obligations on Air IT to perform the Services under this Agreement constitute such written instructions;
- 13.7.5** in a manner consistent with the Data Protection Legislation, implement appropriate technical and organisational measures to safeguard such Customer Personal Data from unauthorised or unlawful processing or accidental loss, destruction or damage, and that having regard to the state of technological development and the cost of implementing any measures, such measures shall ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage and to the nature of such data to be protected;
- 13.7.6** where Schedule 1 shows that Air IT is responsible for Maintenance and this includes back-ups of Customer Personal Data:
- 13.7.6.1** Air IT shall promptly inform the Customer if such Customer Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable as a result of Air IT's acts or omissions or the acts or omissions of any of the Agreed Sub-Processors;
- 13.7.6.2** if any Customer Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable solely as a result of Air IT's acts or omissions or the acts or omissions of any of the Agreed Sub-Processors, Air IT shall use reasonable endeavours to restore such Customer Personal Data at its own expense from and to the latest back up of such Customer Personal Data maintained by Air-IT;
- 13.7.6.3** Air IT shall not be responsible for any loss, destruction, alteration or unauthorised disclosure of Customer Personal Data caused by any third party except those Third Party Providers contracted by Air IT to perform services related to the Customer Personal Data backup to the extent described in clause 4.6; and
- 13.7.6.4** all other costs of restoring data which is lost or destroyed or becomes damaged, corrupted or unusable shall be borne by the Customer.
- 13.7.7** from 25 May 2018, provide assistance to the Customer (at the Customer's reasonable request and at the Customer's cost and to the extent relevant to Air IT's obligations under this Agreement):
- 13.7.7.1** to comply with its obligations under the Data Protection Legislation;
- 13.7.7.2** notify the Customer upon becoming aware of a Data Security Incident and assist with documenting any Data Security Incidents and reporting any Data Security Incidents to any relevant authority or Data Subjects themselves;
- 13.7.7.3** in the event of the exercise by any Data Subject of any of their rights under the Data Protection Legislation which comes to the attention of Air IT, inform the Customer as soon as reasonably practicable, and Air IT shall assist the Customer at its cost with all Data Subject information requests;
- 13.7.7.4** conducting privacy impact assessments of any Processing operations and consulting with supervisory authorities, Data Subjects and their representatives; and
- 13.7.7.5** delete all Customer Personal Data after the end of the Term. Air IT will be entitled to retain any Customer Personal Data which it must retain to comply with any Applicable Law or which it is required to retain for legitimate purposes (including records relating to tax, insurance, and accounting); and
- 13.7.8** upon request, provide the Customer with all information necessary to demonstrate compliance with the obligations set out in this clause 13.7.8 and allow the Customer, on giving at least five (5) days' notice to Air IT, to inspect all Air IT's facilities, equipment, documents and electronic data relating to the processing of Customer Personal Data held by the Customer.

14. TERMINATION

14.1 This Agreement shall come into force on the Effective Date and continue for the Initial Term subject to earlier termination provided in this Agreement. Upon expiry of the Initial Term or any subsequent Renewal Period, this Agreement shall automatically renew for further periods of 12 months ("Renewal Period"), unless terminated by either Party giving the other 90 days' prior written notice to expire on any anniversary of the Effective Date. The Customer may terminate this Agreement prior to the expiry of the Initial Term or part way through any Renewal Period, but the Customer shall pay Air IT all Managed Services Fees for the remaining part of the Initial Term or the Renewal Period in which the Agreement is terminated as the case may be, all Fees required by Third Party Providers, all Fees required to buy out any Third Party Services.

14.2 This Agreement may be terminated and/or any of the Services suspended:

14.2.1 immediately by Air IT if the Customer fails to pay any sum as and when due or if Air IT is obliged to do so by any Government agency or emergency service or similar authority or if a relevant service is suspended or terminated by a Third Party Provider or if Air IT suspects or is notified that any fraudulent use is being made of any of the Services or any relevant equipment or SIM card has been lost or stolen;

14.2.2 immediately by either Party by notice in writing if the other commits any material breach of any terms of this Agreement (except non-payment of sums due) and which (in the case of a breach capable of being remedied) is not remedied within 28 days of a written request to remedy the same; and

14.2.3 immediately by either Party if the other is, or is deemed to be, unable to pay its debts as they fall due or is insolvent, suspends making payments on any debts or announces an intention to do so, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness by reason of actual or anticipated financial difficulties, proposes, makes or is subject to a company voluntary arrangement, a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006, has a moratorium declared in respect of any of its indebtedness, ceases or threatens to cease to carry on business, applies for an interim order under Section 252 Insolvency Act 1986 or has a bankruptcy petition presented against it, has appointed in respect of it or any of its assets a liquidator, trustee in bankruptcy, judicial custodian, supervisor, compulsory

manager, receiver, administrative receiver, administrator or similar officer (in each case whether out of court or otherwise), pledges or charges any goods which remain the property of the other party, takes or suffers any similar action in any jurisdiction or any proposal is made or step or action is taken (including the making of an application or the giving of any notice) by it or by any other person in connection with any of these circumstances. Each Party will notify the other Party immediately if any of the foregoing occurs.

14.3 Any termination of this Agreement shall be without prejudice to any other rights or remedies to which a Party may be entitled at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination. Clauses 1.1, 1.2, 2.5, 7.5, 9, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22 and 23 shall survive termination of this Agreement.

14.4 Upon termination of this Agreement (howsoever occasioned) all Fees required by Third Party Providers shall become immediately due and payable by the Customer to Air IT. Air IT may charge an administration fee for handling the cancellation of all or any Services and all licences granted pursuant to this Agreement and all access to the Services and Third Party Services procured by Air IT for the Customer shall end and the Customer shall at Air IT's option either return or destroy all copies of Air IT Software or any Third Party Software supplied by Air IT in the Customer's possession or control. Upon termination of this Agreement Air IT shall delete all Customer data held by it within the Air IT System except for such copies as are needed by Air IT for archive purposes.

14.5 Neither Party shall take any action, directly or indirectly, whether on their own account or through any intermediary that would constitute an offence under or breach of:

14.5.1 the Bribery Act 2010 as amended from time to time; or

14.5.2 any other applicable anti-bribery laws or regulations anywhere in the world;

and each Party shall procure that none of its officers, employees, agents, representatives, contractors, or other persons acting with the authority of that party or otherwise performing services for on behalf of that Party shall take any such action.

14.6 It is noted and agreed that any breach of Clause 14.5 shall be a material breach which is incapable of remedy thereby entitling the party not in breach to terminate this Agreement immediately.

14.7 During this Agreement and following any termination of this Agreement, at its own cost, each Party shall cooperate

fully with the other in any investigation of any conduct prohibited under Clause 14 and this Clause shall survive termination of this Agreement.

15A NON SOLICITATION

Each of the Customer and Air IT agrees that for the period until the expiry of twelve months after termination of this Agreement it shall not without the prior written agreement of the other Party knowingly employ or engage on any basis or offer such employment or engagement to any staff of the other Party who have been associated with the use or the provision of the Services except where the same follows a response to a general public advertisement.

15. FORCE MAJEURE

15.1 Neither Party shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fire, strikes, insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and/or utilities, utility disruption and/or requirements or regulations of any civil or military authority (an 'Event of Force Majeure').

15.2 Each Party agrees to give notice immediately to the other on becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

15.3 If a default due to an Event of Force Majeure shall continue for more than 12 weeks then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

16. WAIVER

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either Party to exercise or avail itself of any right power or privilege that it has or may have operate as a waiver of any breach or default by the other Party.

17. NOTICES

Any notice request instruction or other document to be given shall be delivered or sent by first class post or by e-mail (such email transmission to be confirmed by letter posted within 12 hours) to the address of the other Party set out in this Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by e-mail) upon the expiration of 12 hours after dispatch.

18. INVALIDITY AND SEVERABILITY

If any part of this Agreement is held to be void or unenforceable that part shall be struck out and the remainder of this Agreement shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

19. ENTIRE AGREEMENT

This Agreement and the documents referred to in it contain the whole agreement between the Parties and supersede any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement shall exclude liability for any fraudulent statement or act made prior to the date of this Agreement.

20. ASSIGNMENT AND SUB-LICENSING

20.1 The Customer shall not be entitled to assign or otherwise transfer this Agreement nor any of its rights or obligations nor sub-license the use (in whole or in part) of the Services without the prior written consent of Air IT.

20.2 Air IT shall be entitled to assign or otherwise transfer this Agreement and to sub-contract its obligations.

21. THIRD PARTY RIGHTS

All third party rights are excluded and no third party shall have the right to enforce any of the terms of this Agreement.

22. HEADINGS

Headings to Clauses in this agreement are for the purpose of information and identification only and shall not be construed as forming part of this agreement.

23. LAW

This Agreement its formation and all claims arising out of it including all non-contractual claims shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the non-exclusive jurisdiction of the English courts in relation to all disputes arising out of or in relation to this Agreement including all non-contractual claims.