

General Terms & Conditions

1. Definitions and Interpretation

1.1 In these terms and conditions, the following terms shall have the following meanings:

"Affiliate" means with respect to an entity, any entity that controls, is controlled by, or is under common control with that entity, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of an entity whether through the ownership of voting securities, contract or otherwise;

"Agreement" means (i) the Attachment entered into between the Client and INGENTIVE; and (ii) the latest version of these General Terms & Conditions ("**General Terms & Conditions**") (including its Schedules) either provided by INGENTIVE with that Attachment or available on www.ingentive.com as at the date of execution the Attachment;

"Agreement Personal Data" means Personal Data which is to be Processed under or in connection with this Agreement as described in the Attachment;

"Attachment" means, but is not limited to, an Order Form, SOW and/or Task Order;

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

"Client" shall be the legal entity detailed as the "Client" in the Attachment;

"Client Configuration and Development Documents" means all documents relating to Client configuration and development relating to the Managed Services;

"Client Customisations" means any Modifications that are created, developed and/or modified by INGENTIVE to meet Client's specific business objectives and requirements, paid for by Client, and specifically identified as Client Customisations in the Attachment;

"Client Contact" means the designated individual at Client who shall be the first point of contact for INGENTIVE in relation to technical or operational matters as identified in the Attachment or as otherwise notified by Client to INGENTIVE in writing from time to time;

"Client Data" means all data, including all text, sound, video, or image files and software that are provided to Microsoft by, or on behalf of, Client through use of the Microsoft Online Services;

"Client Materials" any data, information, text, graphics, templates and any other content in any and all media provided by Client to INGENTIVE for use in connection with the Services and/or incorporation into any Modifications or other Deliverables;

"Commitment Offering" a commitment by Client to purchase a specific quantity of Subscription Software for use during a Term;

"Consumption Subscription" means a Subscription billed based on actual usage ("pay-as-you-go") in the preceding month.

"Confidential Information" means any business or technical information of INGENTIVE or Client that (i) is designated by a party as "confidential" or "proprietary" at the time of disclosure or (ii) due to its nature or the circumstances of its disclosure, the party receiving such information knows or has reason to know that such information should be treated as confidential or proprietary;

"Data Deliverables" means data, reports or analyses to be delivered under the Attachment;

"Data Dump" means the transfer of data to INGENTIVE, as permitted under Data Protection Laws, for the purpose of allowing INGENTIVE to assess data based issues;

"Data Protection Laws" means any laws in force in the United Kingdom from time to time that relate to data protection, the processing of personal data and privacy, including: (a) the Data Protection Act 2018; (b) the General Data Protection Regulation (EU) 2016/679; and (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and references to "**Data Subjects**", "**Personal Data**", "**Process**", "**Processed**", "**Processing**", "**Processor**" and "**Supervisory Authority**" have the meanings set out in, and will be interpreted in accordance with, such laws;

"Data Security Incident" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed;

"Dedicated Services" means:

- (i) a dedicated portal for Client to raise tickets;
- (ii) a dedicated phone number for Client's use to contact a support consultant; and
- (iii) consultant and developer support;

"Deliverables" means Software, Modifications and Data Deliverables as modified in the Attachment;

"Designated Equipment" means such equipment on which the Supported Software is installed as is approved in writing by, or conforming in all material respects to specifications provided from time to time by, INGENTIVE and/or any Third Party (which specifications may change over time for a number of reasons, including without limitation, as the amount of data throughput by Client increases or the usage or nature of the Supported Software changes);

"Designated Hours" means 09:00 to 17:00 (UK time) on Business Days or such other times as may be specified as "Designated Hours" in the Attachment;

"Effective Date" means the date of signature of the Attachment;

"Extended Hours" means such times as may be specified as "Extended Hours" in the Attachment;

"Fixed Term Subscription" means a Subscription where the duration of the Subscription is for a fixed period of time;

"Force Majeure Event" means any Act of God, war, riot, act of terrorism, outbreak of hostilities, strike or other industrial action of any kind, malicious damage, default of suppliers or sub-contractors, accident, failure or breakdown of plant or machinery, fire, flood, explosion, any act of local or national government or authority and any other cause or circumstance whatsoever outside the reasonable control of the parties;

"INGENTIVE" means Ingentive Limited whose registered address is at Birchin Court, 20 Birchin Lane, London, EC3V 9DU with registered company number 15014526.

"INGENTIVE Components" means all tools, ideas, concepts, processes, methodologies, software, and know-how developed by INGENTIVE (whether prior to or during the course of this Agreement), some of which INGENTIVE may use in its performance of Services;

"INGENTIVE Deliverable" means INGENTIVE Software, Modifications, Data Deliverables and INGENTIVE's professional services and excludes Third Party Software;

"INGENTIVE Software" means the standard software components or modules that are owned by INGENTIVE and licensed to Client under a separate licence agreement;

"Intellectual Property Rights" means any and all intellectual property and/or proprietary rights of any kind, tangible or intangible, now known or hereafter existing, including copyrights, trade secret rights, know how, database rights, trademarks and patent rights, including all

registrations and applications in force whether now or in the future in any jurisdiction throughout the world and any other similar rights;

“International Transfer” means a transfer to a country outside the European Economic Area (as it is made up from time to time) of Agreement Personal Data which is undergoing Processing, or which is intended to be Processed after transfer;

“Managed Services” means the managed services described in the Managed Services Schedule and the Attachment;

“Managed Service Commencement Date” means the go-live date in respect of the use of the Supported Software by Client or such other date as is specified in the Attachment;

“Managed Services Schedule” means the terms and conditions set out in Schedule 1 which are applicable where Client enters into an Attachment with INGENTIVE for the provision of Managed Services;

“Managed Service Initial Term” means twelve months from the Managed Service Commencement Date or such other period that the parties may agree in the Attachment;

“Microsoft” means Microsoft Corporation and/or any of its subsidiaries from time to time;

“Microsoft Licence” means any software license entered into between Client and Microsoft in respect of the Microsoft Software;

“Microsoft Software” means the standard software components provided to Client by Microsoft under the Microsoft Licence from time to time;

“Microsoft Minimum Support” means the base level support service which is to be provided by INGENTIVE to Client under paragraph 4.1 of Schedule 2 in relation to Microsoft Online Services;

“Microsoft Minimum Support Date” means the Subscription Start Date in respect of any Subscription Software provided by Microsoft;

“Modifications” means modifications, additions or customisations to Software developed or produced by INGENTIVE and provided to Client hereunder;

“Order Form” means an order form for provision of Software or Services to be provided by INGENTIVE to Client (either on its own behalf or on behalf of any Third Party) and executed by the parties;

“Microsoft Online Services Terms” means: (i) the agreement that Microsoft uses to convey or provide Subscription Services to Client as made available at <http://aka.ms/customeragreement> (or such other web address as may be notified to Client from time to time); and (ii) in respect of any Client, or any legal entity that owns or is under common ownership with Client, who is subject to oversight by a financial services regulator, the Microsoft Online Services Terms Financial Services Amendment that is made available at <http://aka.ms/customeragreement> (or such other website address as may be notified to Client from time to time); each as including any other documents referred to within and as varied from time to time by Microsoft;

“Microsoft Online Services” means any Subscription Software and/or other Subscription Services which is subscribed to by or on behalf of Client under the Microsoft Online Services Terms;

“Microsoft Online Services SLA” means the service level agreement commitments Microsoft makes to Client in the Microsoft Online Services Terms regarding delivery and/or performance of the applicable Subscription Services;

“Out of Hours” means any time outside the Designated Hours and Extended Hours;

“Performance Review” means a quarterly review of the systems supported under an Attachment for Managed Services including any recommendations for improvements to, and a review of any updates and patches;

“Perpetual Software” means software licensed by INGENTIVE or a Third Party to Client on a perpetual basis.

“Professional Services” means Software or Modifications related professional services, including configuration, upgrades, support, implementation, programming and application design and development, systems analysis and design, third party program installation, conversion and implementation planning, and installation evaluation;

“Services” means any or all of the following: supply of Deliverables, Managed Services and/ or Professional Services;

“Software” means the Perpetual Software and the Subscription Software;

“SOW” means a statement of work describing the Deliverables and/ or Services to be provided by INGENTIVE to Client and executed by the parties;

“Subscription” means the agreement for a subscription to a Subscription Service, formed in accordance with this Agreement and where the Subscription Service is the Microsoft Online Services, the Subscription Schedule and the Microsoft Online Services Terms;

“Subscription Schedule” means the terms and conditions set out in Schedule 2 which are applicable where Client enters into an Attachment with INGENTIVE for the provision of Subscription Software;

“Subscription Services” means Subscription Software and/or any other subscription service provided by INGENTIVE or any Third Party to Client;

“Subscription Software” means any software licensed by INGENTIVE or a Third Party to Client on a subscription or “as a service” basis, along with any software provided by that Third Party for installation on Client’s devices as part of its Subscription;

“Subscription Start Date” means the date specified in the Attachment from when a Subscription will commence (where applicable);

“Subscription Term” means the duration of the Agreement in relation to a specific Subscription Service;

“Sub-Processor” means any third party appointed by INGENTIVE to Process Agreement Personal Data;

“Super-User” means designated ‘super-user’ of Client;

“Supported Modifications” means changes, upgrades, enhancements and additions to the Supported Software made by INGENTIVE for Client from time to time;

“Supported Software” means any Software and Supported Modifications in respect of which Client and INGENTIVE have agreed and executed an Attachment for the provision of Managed Services;

“Task Order” means a task order describing Deliverables and/or Services to be provided by INGENTIVE to Client and executed by the parties;

“Term” means from the Effective Date until an Agreement is terminated in accordance with clause 4;

“Third Party” means any entity other than INGENTIVE (and may include Microsoft);

“Third Party Enhancement Plan” means the Microsoft Enhancement Plan and/or any other similar support services provided by third parties;

“Third Party Licence” means the Microsoft Licence, the Microsoft Online Services Terms and/or any other third party licence or purchase agreement under which a Third Party has licensed Third Party Software to Client;

“Third Party Software” means Microsoft Software and any other Software supplied by INGENTIVE in which the Intellectual Property Rights in such software is proprietary to a third party;

“Ticket Tracker” means the online tracker which provides Client visibility and tracking of the status of a ticket as part of the Managed Services;

“T&M Rates” means the time and materials rates of INGENTIVE as may be set out in the Attachment and/or updated by INGENTIVE from time to time; and

“User” means individual user authorised by Client to use the Software.

1.2 Clause headings shall not affect the interpretation of the Agreement. References to clauses and the schedules are to the clauses and the schedules of the Agreement. References to paragraphs are to paragraphs within a schedule to this Agreement.

1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.4 Any words following the terms including, include, or any similar expression are illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Order Formation

2.1 Each Agreement is made on the Effective Date between Client and INGENTIVE and will apply to all Services provided by INGENTIVE to Client as described in the Attachment. The Attachment will set forth, at a minimum, a description of the Services to be performed by INGENTIVE, including (as applicable):

2.1.1 a list identifying all Software to be licensed or purchased thereunder;

2.1.2 the development and/or performance schedule for all Modifications and Data Deliverables; and

2.1.3 applicable fees.

2.2 This Agreement is binding only if the Attachment is executed by the Client and INGENTIVE and INGENTIVE will have no obligation to provide Services other than those specified in any such fully executed Attachment.

2.3 Client may request additional Services in accordance with clause 3.1 below or by separate Attachment. If Client requests that Services be performed outside of the Designated Hours, INGENTIVE may charge a premium rate for such Services. If a separate Attachment is agreed, this will form a separate Agreement subject to the latest version of these General Terms & Conditions as are in force at the date of signature of that Attachment.

2.4 Where the parties agree in the Attachment for the provision of Third Party Software, Client acknowledges it shall also be bound by the provisions of the relevant Third Party Licence.

3. Services

3.1 If Client desires to initiate changes to an existing Attachment, it will submit a written request to INGENTIVE, setting forth the proposed changes and authorisation for INGENTIVE to proceed with a formal Change Request. Within 5 days of Client’s submission or if INGENTIVE in good faith determines that the Attachment must be revised to complete the Services, INGENTIVE will provide Client with a written Change Request, setting forth, at a minimum, any changes or additions to:

3.1.1 the delivery schedule;

3.1.2 the Services; and

3.1.3 the estimated fees in that Attachment.

3.2 Client will accept or reject the Change Request within 5 days after receipt (such consent not to be unreasonably withheld or delayed). A Change Request will be binding only if signed by both parties and, upon execution, such Change Request will be deemed an amendment to the applicable Attachment.

3.3 In each Attachment, unless otherwise agreed, INGENTIVE will provide estimates of its fees, costs and delivery dates. Client understands that:

3.3.1 INGENTIVE is not bound by any such estimate and provides Services on a time and materials basis unless otherwise expressly set forth in the Attachment;

3.3.2 any such estimate is provided only as a good faith approximation based on information furnished to INGENTIVE by Client; and

3.3.3 if any estimate set forth in the Attachment becomes materially inaccurate, INGENTIVE will notify Client in writing as soon as reasonably possible after INGENTIVE becomes aware of such change. In addition, at Client’s request, INGENTIVE will update the estimates in the Attachment.

3.4 In the case of any conflict between these General Terms & Conditions and the Attachment, these General Terms & Conditions will take precedence unless the Attachment expressly states that it is intended to amend these General Terms & Conditions.

3.5 A Client may permit the use and benefit of any Software and/or other Deliverables to any of its Affiliates (e.g. authorise its Affiliates to access and use INGENTIVE Software or Modifications installed by Client) without entering into a separate Attachment with INGENTIVE provided that:

3.5.1 INGENTIVE will have no obligation to provide any Services or Deliverables directly to that Affiliate;

3.5.2 Client and its Affiliates are solely responsible for securing any licences necessary to use any Third Party Software;

3.5.3 Client remains fully responsible and liable to INGENTIVE at all times for all acts and omissions of its Affiliates; and

3.5.4 in the event that any such Affiliate is no longer an Affiliate of Client, any rights which the Affiliate previously had to use and have the benefit of the Software and/or other Deliverables shall immediately cease.

3.6 Any dates specified by INGENTIVE for delivery in relation to the Agreement are an estimate only and in relation to the same, time shall not be of the essence nor shall time be made of the essence against INGENTIVE by notice.

4. Term and Termination

4.1 Each Agreement shall take effect from the Effective Date and will continue for the Term.

4.2 The licence to any Perpetual Software delivered under the Attachment will become effective upon payment in full of the licence fees therefore as set forth in the Attachment and will continue in accordance with the terms of the applicable licence agreement.

4.3 The Agreement may be terminated by either party at any time, without cause, on 30 days’ prior written notice to the other party. In the event of termination by either party under this clause 4.3, INGENTIVE will continue to deliver all Services

- under the Attachment (unless otherwise agreed between the parties in writing).
- 4.4 Subject to clauses 4.6 and 4.7, and unless otherwise agreed within the Attachment, an Agreement for Professional Services (as set out in the Attachment) may be terminated by either party at any time without cause on 30 days' prior written notice to the other party, provided that:
- 4.4.1 where INGENTIVE elects to terminate an Agreement for Professional Services without cause, INGENTIVE will complete its Services under such Agreement unless instructed otherwise by Client (and Client shall continue to be bound to pay all amounts due thereunder); or
- 4.4.2 where either party elects to terminate an Agreement for Managed Services (as set out in the Attachment) without cause, the Agreement will continue in full force and effect until terminated in accordance with Schedule 1 paragraph 2.2
- 4.5 Without affecting any other right or remedy available to it, either party may terminate the Agreement (in whole or in part) with immediate effect by giving written notice to the other party if:
- 4.5.1 the other party breaches any term or condition of this Agreement and/or the Attachment and such breach is not cured within 30 days following written notice from the party, specifying the breach;
- 4.5.2 the other party repeatedly breaches any of the terms of the Agreement and/or the Attachment in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;
- 4.5.3 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 ;
- 4.5.4 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;
- 4.5.5 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;
- 4.5.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 4.5.7 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 4.5.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 4.5.9 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;
- 4.5.10 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 4.5.3 to clause 4.5.9(inclusive); and/ or
- 4.5.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 4.6 Unless otherwise provided in the Attachment, Client may terminate any Agreement up to five (5) Business Days prior to commencement of INGENTIVE's Services thereunder provided that, on such a termination, Client will remit to INGENTIVE an amount equal to the sum of:
- 4.6.1 INGENTIVE's fees for the Services it expected to perform in the first ten (10) Business Days;
- 4.6.2 reimbursement for any third party charges incurred under that Agreement and already paid or due and owing by INGENTIVE; and
- 4.6.3 the cost of any non-cancellable commitments or expenses already incurred by INGENTIVE under that Agreement.
- 4.7 If the Agreement is terminated less than five (5) Business Days prior to the commencement date, Client will remit to INGENTIVE an amount equal to 50% of INGENTIVE's estimated fees for Services under that Agreement together with the other amounts listed above.
- 4.8 Notwithstanding anything to the contrary above, Client will not be entitled to terminate any Agreement with respect to Third Party Software already ordered by INGENTIVE from any third party vendor(s) on Client's behalf. In the event of any termination by Client of the Agreement under this clause 4, INGENTIVE will use reasonable commercial efforts to reallocate its resources and terminate or modify any outstanding third party commitments and will pass any such savings on to Client.
- 4.9 Without affecting any other right or remedy available to it, INGENTIVE may terminate the Agreement with immediate effect by giving written notice to Client if for any reason Microsoft terminates Client's status as a customer of Microsoft.
- 4.10 Within 30 days after expiry or termination (for any reason) of this Agreement, Client will:
- 4.10.1 pay for all Services performed and Deliverables provided by INGENTIVE through the later of:
- 4.10.1.1 the effective termination date of the Agreement; or
- 4.10.1.2 INGENTIVE's completion of all Services and Deliverables under the Agreement; and
- 4.10.2 reimburse INGENTIVE for any non-cancellable commitments incurred by INGENTIVE to date in connection with the Agreement, as applicable.
- 4.11 Promptly following termination of the Agreement, except as set forth herein or separately agreed, each party will return to the other party its Confidential Information (as defined below) and other property in the first party's possession or control.
- 4.12 Where an Agreement is for Perpetual Software, provided that Client has paid all applicable licence fees related to any Software on termination, the licence(s) to the Software will survive termination in accordance with the terms of the applicable licence agreements.
- 4.13 Where an Agreement is for Subscription Services, Client's right to use the Subscription Services shall cease immediately upon termination. Upon termination, Client may transfer its Subscription to a third party.

- 4.14 Any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 4.15 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

5. Fees and Payments

- 5.1 All amounts payable hereunder will be invoiced weekly and are due and payable within 30 days of the end of the month in which the invoice is dated unless otherwise agreed in an Attachment.
- 5.2 Any invoice that is unpaid when due will accrue interest at the lesser of 1% monthly (12% per annum) or the maximum rate permitted by law. If an invoice is not paid by Client when due, INGENTIVE, in addition to any other available remedies, may suspend performance under this Agreement until all overdue invoices have been paid. If INGENTIVE exercises its right to suspend under this clause 5.1, all times estimated in the Attachment for performance or delivery may be extended by the number of days that any payment thereunder is late and any fee estimates may need to be revised to reflect any additional costs incurred by INGENTIVE arising from the period of suspension.
- 5.3 If Client repeatedly pays late, INGENTIVE reserves the right to remove any discount from the current rate card for services for open Attachments and future Attachments.
- 5.4 Client will review each invoice promptly upon receipt and will notify INGENTIVE in writing within 10 Business Days of the invoice date of any dispute as to the amount or validity of that invoice. If Client fails to timely deliver such notice, Client will be deemed to have consented to the invoiced charges; provided that, for the avoidance of doubt, Client's failure to timely deliver the notice will not constitute a waiver of any claims by Client hereunder with respect to the Services covered by that invoice. Notwithstanding anything else herein, Client will pay the undisputed portion of any disputed invoice in accordance with clause 5.1.
- 5.5 Where the Attachment sets forth the agreed hourly rates between the parties for INGENTIVE's professional services thereunder, INGENTIVE may increase its rates once a year in accordance with its normal business practices, but by no more than 10% annually, unless otherwise agreed in the Attachment.
- 5.6 Client will pay all reasonable travel, living and other expenses incurred by INGENTIVE in performing Services hereunder on the terms set forth in clause 5.1 above. Travel time will be billed at 50% of INGENTIVE's applicable hourly rates for its personnel as set out in the Attachment.
- 5.7 Subject to the next sentence only, Client will pay any sales, use or value added taxes (but excluding taxes assessed against INGENTIVE's income or payroll) due and owing on INGENTIVE's Services hereunder, including any Third Party Software. Such taxes will be separately invoiced to and paid by Client or Client will provide INGENTIVE and/ or the appropriate authority with an exemption certificate.
- 5.8 Any advance deposits against fees for Services under the Attachment hereto will be applied to the fees invoiced for those Services only.
- 5.9 Save as otherwise expressly provided for in this Agreement or required by law, all payments to be made by Client to

INGENTIVE under this Agreement will be made in full and without any set-off or any deduction or withholding (of any kind) including without limitation on account of any counter claim. For the avoidance of doubt (and without limitation), the prohibition on set-off, deduction or withholding under this clause 5.9 shall apply to any payments due for any Services, Deliverables or Software due and payable under or in connection with the Agreement.

- 5.10 Client agrees that INGENTIVE has the right at any time before delivery of the Software and/or Services to withdraw any discount and/or to revise any Price quoted if there is a change in the cost to INGENTIVE of supplying the Software and/or Services whether by reason of exchange rate fluctuations, third party charges or otherwise. If a price is increased between the Attachment being placed and delivery of the Software or Services, INGENTIVE will inform Client as soon as possible and give Client the option of reconfirming the Attachment at the new price or cancelling the Attachment.
- 5.11 INGENTIVE tries to ensure that all prices on its website, in its marketing materials and its price lists are accurate, but errors may occur. If INGENTIVE discovers an error in the price of the Services on the Attachment, it will inform Client as soon as possible and give Client the option of reconfirming the Agreement at the correct price or cancelling.

6. Other Obligations

- 6.1 Client will:
- 6.1.1 respond to requests from INGENTIVE on a timely basis;
- 6.1.2 have at least one Client Contact identified in each Attachment, available during regular business hours and authorised to approve Change Requests and provide other information and assistance to INGENTIVE;
- 6.1.3 provide INGENTIVE with timely, accurate and complete information and documentation;
- 6.1.4 make available to INGENTIVE other Client personnel familiar with Client's requirements and with the expertise to permit INGENTIVE to undertake and complete its obligations;
- 6.1.5 maintain a proper operating environment for the Software;
- 6.1.6 provide a safe area for INGENTIVE to perform any Services required to be performed at Client's site;
- 6.1.7 provide for all power, environmental requirements, supplies, cabling, communications facilities, and all other equipment and facilities required;
- 6.1.8 regularly back up all files and data;
- 6.1.9 provide access to Client's systems as reasonably requested by INGENTIVE; and
- 6.1.10 obtain and maintain all necessary licences, consents and permissions necessary for INGENTIVE to perform its obligations under the Agreement.
- 6.1.11 register, and keep registered, INGENTIVE as their official delivery partner of record with all Third Party Software providers (including but not limited to Microsoft) named in each Attachment until the Services to be delivered in relation to the relevant Attachment have been completed or the Attachment has been terminated in accordance with the terms of this Agreement.
- 6.2 Each party will comply with all laws applicable to the performance of its obligations hereunder and to the Software, including laws and regulations relating to the import or export of software or technical data related thereto, including, without limitation, English import/export laws and US import/export laws (including the U.S. Export Administration

Regulations and U.S. International Traffic in Arms Regulations).

- 6.3 INGENTIVE is committed to providing a safe and respectful environment for all employees, contractors, suppliers and clients. As part of this commitment, INGENTIVE has implemented policies and procedures to proactively prevent any form of sexual abuse, harassment. Client agrees to comply with these policies and procedures or to have matching policies and procedures of equal standing in place.

7. Confidential Information

- 7.1 Each party acknowledges that it may receive or have access to the other party's Confidential Information during the Term. Each party will maintain the confidentiality of the other party's Confidential Information, will not use such Information other than to perform its obligations hereunder and will not disclose such Information to any third party, excluding only any employee, consultant and advisor who needs access to the Confidential Information to perform his or its obligations to INGENTIVE or Client and who has executed an agreement under which he or it is fully bound by the receiving party's obligations hereunder. On termination of the Agreement, the receiving party will promptly deliver to the disclosing party or destroy all notes, memoranda and all other media and materials containing the disclosing party's Confidential Information and will not retain any copies thereof other than solely for archival, disaster recovery and compliance purposes, which copies will remain wholly subject to this clause 7.

- 7.2 Confidential Information does not include information that the receiving party can document:

- 7.2.1 was generally available to the public at the time received from the disclosing party or becomes generally available to the public thereafter without breach of this clause 7;
- 7.2.2 was known to it, without restriction, at the time of disclosure;
- 7.2.3 is disclosed to the receiving party by a third party who may transfer or disclose such Information without restriction; or
- 7.2.4 was independently developed by it without any use of the disclosing party's Confidential Information.

- 7.3 Further, the restrictions on disclosure of Confidential Information will not apply to the extent disclosure is required by a court, administrative agency or other governmental body with jurisdiction; provided that the receiving party uses diligent efforts to:

- 7.3.1 provide prompt notice of the required disclosure to the disclosing party; and
- 7.3.2 limit disclosure and obtain confidential treatment for such Confidential Information.

8. Data Protection and Information Security

- 8.1 Client authorises INGENTIVE to Process the Agreement Personal Data during the term of this Agreement as a Processor for the purpose set out in the relevant Attachment.

- 8.2 Client warrants to INGENTIVE that:

- 8.2.1 it has all necessary rights to authorise INGENTIVE to Process Agreement Personal Data in accordance with this Agreement and the Data Protection Laws; and
- 8.2.2 its instructions to INGENTIVE relating to Processing of Agreement Personal Data will not put INGENTIVE in breach of Data Protection Laws, including with regard to International Transfers.

- 8.3 If INGENTIVE considers that any instructions from Client relating to Processing of Agreement Personal Data may put INGENTIVE in breach of Data Protection Laws, INGENTIVE will be entitled not to carry out that Processing and will not be in breach of this Agreement or otherwise liable to Client as a result of its failure to carry out that Processing.

- 8.4 Each party will comply with the Data Protection Laws in respect of Agreement Personal Data.

- 8.5 INGENTIVE will not engage any third party for the Processing of Agreement Personal Data without the prior written consent of Client (such consent not to be unreasonably withheld or delayed) other than:

- 8.5.1 Microsoft; and

- 8.5.2 any other third party listed in the Attachment.

- 8.6 Where Microsoft appoints any sub-processor and provides notice of this to INGENTIVE, INGENTIVE shall notify Client.

- 8.7 If INGENTIVE appoints a Sub-Processor, INGENTIVE will put a written contract in place between INGENTIVE and the Sub-Processor that specifies the Sub-Processor's Processing activities and imposes on the Sub-Processor substantially similar protective terms to those imposed on INGENTIVE in this clause 8. INGENTIVE will remain liable to Client for performance of the Sub-Processor's obligations.

- 8.8 INGENTIVE will:

- 8.8.1 process the Agreement Personal Data only on documented instructions from Client (unless INGENTIVE or the relevant Sub-Processor is required to Process Agreement Personal Data to comply with applicable laws, in which case INGENTIVE will notify Client of such legal requirement prior to such Processing, unless such applicable laws prohibit notice to Client. For the purpose of this clause 8, the obligations on INGENTIVE to perform the Services are documented instructions. Nothing in this clause 8 will permit Client to vary INGENTIVE's obligations under this Agreement other than in accordance with clause 3.1;

- 8.8.2 without prejudice to clauses 8.2.2 and 8.3, immediately inform Client if, in its reasonable opinion, any instruction received from Client infringes any Data Protection Laws;

- 8.8.3 ensure that any individual authorised to Process Agreement Personal Data:

- 8.8.3.1 is subject to confidentiality obligations or is under an appropriate statutory obligation of confidentiality;

- 8.8.3.2 complies with clause 8.8.1; and

- 8.8.4 at the option of Client, delete or return to Client all Agreement Personal Data after the end of the provision of Services relating to Processing, and delete any remaining copies. INGENTIVE will be entitled to retain any Agreement Personal Data which it has to keep to comply with any applicable law or which it is required to retain for insurance, accounting, taxation or other record keeping purposes. This clause 8 will continue to apply to retained Agreement Personal Data.

- 8.9 INGENTIVE will only make an International Transfer if:

- 8.9.1 a competent authority or body of the United Kingdom or the European Commission (as applicable) makes a binding decision that the country or territory to which the International Transfer is to be made ensures an adequate level of protection for Processing of Personal Data;

- 8.9.2 INGENTIVE or the relevant Sub-Processor provides adequate safeguards for that International Transfer in accordance with Data Protection Laws, in which case Client will execute any documents (including data transfer agreements) relating to

that International Transfer which INGENTIVE or the relevant Sub-Processor requires it to execute from time to time; or

- 8.9.3 INGENTIVE or the relevant Sub-Processor is required to make the International Transfer to comply with applicable laws, in which case INGENTIVE will notify Client of such legal requirement prior to such International Transfer unless such applicable laws prohibit notice to Client on public interest grounds.
- 8.10 INGENTIVE will:
 - 8.10.1 implement appropriate technical and organisational measures in respect of the Agreement Personal Data;
 - 8.10.2 notify Client without undue delay after becoming aware of a Data Security Incident;
 - 8.10.3 provide reasonable assistance to Client (at Client's cost) in:
 - 8.10.3.1 complying with its obligations under the Data Protection Laws relating to the security of Processing Agreement Personal Data;
 - 8.10.3.2 responding to requests for exercising Data Subjects' rights under the Data Protection Laws;
 - 8.10.3.3 documenting any Data Security Incidents and reporting any Data Security Incidents to any Supervisory Authority and/ or Data Subjects; and
 - 8.10.3.4 conducting privacy impact assessments of any Processing operations and consulting with Supervisory Authorities, Data Subjects and their representatives accordingly.
- 8.11 INGENTIVE will:
 - 8.11.1 make available to Client all information necessary to demonstrate compliance with the obligations set out in this clause 8; and
 - 8.11.2 allow for and contribute to audits, including inspections, conducted by Client or another auditor mandated by Client, provided that Client gives INGENTIVE at least 30 days' prior written notice of each such audit and that each audit is carried out at Client's cost, during business hours, so as to cause the minimum disruption to INGENTIVE's business and without Client or its auditor having any access to any data belonging to a person other than Client or confidential information of a third party. Any materials disclosed during such audits and the results of and/or outputs from such audits will be deemed to be Confidential Information of INGENTIVE and the provisions of clause 7 will apply to them.

9. Intellectual Property

- 9.1 Subject to this clause 9, INGENTIVE will own all rights, including all Intellectual Property Rights, in and to all Modifications and Deliverables, tangible or intangible, created or produced by INGENTIVE in performing the Services, save that upon delivery by INGENTIVE and payment in full of all relevant fees by Client, Client will own all right, title and interest in and to any Data Deliverables under the Attachment.
- 9.2 Provided that Client is not in breach of this Agreement and has paid all amounts related to the Modifications due to INGENTIVE and subject to clauses 9.7 and 9.8 below, INGENTIVE hereby grants Client a perpetual and irrevocable, non-transferable and non-assignable, non-exclusive, worldwide, royalty-free and fully-paid licence to use, install and execute, reproduce, modify and create derivative works from the Modifications solely for Client's internal business purposes or as otherwise separately agreed in writing. INGENTIVE will deliver the Modifications to Client in source code and object code format subject to Client keeping such source code in strict confidence and using it for its own

internal business purposes only. Client may not distribute, sub-licence or disclose any such Modifications, other than to any third party that provides technical or other services to Client and solely and exclusively to provide services for Client's internal business purposes.

- 9.3 Client's rights in the INGENTIVE Software will be as provided in the applicable INGENTIVE licence agreement. Any associated media, printed material and online or electronic documentation for the INGENTIVE Software will be deemed INGENTIVE Software hereunder. Client acknowledges that the INGENTIVE Software is licensed to Client, not sold.
- 9.4 Client's rights in any Third Party Software and any other data, programs and other materials provided by third parties, regardless of whether or not obtained with the assistance of INGENTIVE, will be as provided in the applicable Third Party Licence and Client is solely responsible for compliance with such third party agreements and policies. INGENTIVE shall have no responsibility or liability to Client in respect of the Third Party Software and Client's sole remedy shall be to the Third Party under the relevant Third Party Licence.
- 9.5 Client acknowledges and agrees that INGENTIVE will retain exclusive ownership of all INGENTIVE Components and will be entitled to use any and all INGENTIVE Components in connection with the performance of Services for other parties. Provided that Client has paid INGENTIVE for the INGENTIVE Components provided under this Agreement, INGENTIVE hereby grants Client a perpetual and irrevocable, non-transferable and non-assignable, non-exclusive, worldwide, royalty-free and fully-paid licence to use any INGENTIVE Component incorporated in Client's Services under the Attachment to the fullest extent necessary for Client's operation and maintenance of any Software, Modifications or other Deliverables included in the Services. Client will not use or distribute any INGENTIVE Component on a standalone basis in any manner. Client may also allow third parties to exercise the foregoing rights solely and exclusively for Client's benefit, including any third party that provides technical or other services to Client.
- 9.6 For the avoidance of doubt, Client retains all right, title and interest in and to any Client Materials. INGENTIVE's ownership rights as set forth above are subject to Client's underlying rights in and to Client Materials. Client hereby grants a fully paid up, perpetual, royalty free, worldwide licence to INGENTIVE to use Client Materials for the purposes of providing the Services.
- 9.7 Client will own and retain all right, title and interest in and to any Client Customisations, subject to the underlying and continuing rights of INGENTIVE or any third party in and to the underlying INGENTIVE Software, INGENTIVE Components or Third Party Software incorporated therein, as the case may be (the "**Underlying Rights**"). INGENTIVE hereby irrevocably assigns and will assign, to Client, without further consideration, all right, title and interest in and to such Client Customisation, excluding any Underlying Rights, and INGENTIVE will sign any documents and assist Client with any necessary filing to establish or maintain Client's right in and to any Client Customisation, excluding any Underlying Rights.
- 9.8 The parties acknowledge and agree that certain product and software components consist or will consist of original work and materials undertaken by INGENTIVE either previously or in performing its obligations under this agreement (together "**INGENTIVE Intellectual Property**"). The parties acknowledge and agree that the copyright and all other Intellectual Property Rights in respect of such INGENTIVE Intellectual Property shall remain the exclusive property of INGENTIVE.

9.9 The provisions of this clause 9 shall continue upon expiration or termination of this Agreement.

10. Personnel

10.1 INGENTIVE personnel performing Services for Client under this Agreement may perform similar services for others during or after the Term. INGENTIVE will make reasonable efforts to honour specific requests of Client regarding the assignment of INGENTIVE personnel; however, INGENTIVE reserves the sole right to make and change all such assignments. On receipt of a written request by Client detailing lawful reasons for removal of any INGENTIVE personnel, INGENTIVE will promptly withdraw or replace such personnel at no additional cost to Client.

10.2 INGENTIVE will use diligent efforts to provide personnel in accordance with the estimates and schedules provided to Client in the Attachment. Should any personnel be unable to perform scheduled Services because of illness, resignation or other causes beyond INGENTIVE's control, INGENTIVE will promptly replace such unavailable personnel and familiarise and/ or train such replacement personnel as necessary at no cost to Client.

11. Non-Solicitation

During the Term and for 12 months thereafter, neither party, directly or indirectly, will solicit for employment or for engagement as an independent contractor, or encourage leaving its employment or engagement, any employee or independent contractor of the other party known to the soliciting party solely through this Agreement. For the avoidance of doubt, general public advertisements for employment or engagement and any individual's response thereto will not be deemed a violation of this clause 11. Any breach of this clause 11 would damage the other party in an amount difficult to ascertain with certainty; therefore, on any breach hereunder, the breaching party will pay to the other party an amount equal to the annual compensation (with the non-breaching party) of the applicable employee or independent contractor.

12. Representations and Warranties

12.1 INGENTIVE will perform the Services in a professional manner using reasonable skill and care and in accordance with generally-accepted industry standards.

12.2 Subject to the terms herein, INGENTIVE warrants to Client that the INGENTIVE Software and Modifications will perform substantially in accordance with the specifications contained in their respective documentation for a period of 30 days after delivery to Client (the "**Warranty Period**"); provided that the INGENTIVE Software and Modifications are used only on the equipment and in the environment for which they were respectively designated and configured and further provided that INGENTIVE will have no responsibility for problems or errors resulting from Third Party Software or from incompatibility of the INGENTIVE Software or Modifications with any Third Party Software where the use thereof is not specified in the applicable Attachment. This limited warranty is given to Client only and may not be transferred to any other person. Except as specifically set forth in the Attachment, INGENTIVE does not warrant that the Software, Modifications and/ or other Deliverables will meet Client's requirements or perform continuously without error.

12.3 INGENTIVE does not provide any warranty in relation to Third Party Software. All Third Party Software provided under this Agreement is licensed directly to Client by or purchased directly by Client from the manufacturer of such Third Party Software, and Client will receive warranties, if any, for Third

Party Software as provided by the licensors, manufacturers or vendors thereof. INGENTIVE will not be liable for any errors or defects in any Third Party Software or Third Party Subscription Services or for any non-performance thereof. Any claim based on, related to or arising out of the use of any Third Party Software will be governed exclusively by the terms of Client's agreement with that third party.

12.4 INGENTIVE's warranties will be void if Client or any third party uses and/or modifies the Services, including without limitation Software, Modifications or Deliverables, in any manner other than as authorised by INGENTIVE.

12.5 The warranties set forth in this clause 12 are in lieu of and exclude (to the fullest extent permitted by law), any and all other representations, conditions and warranties with respect to the Services, including without limitation the Software, Modifications, Client Customisations, INGENTIVE Components and other Deliverables, whether expressed or implied by statute, common law or otherwise, oral or written, including any warranty or condition of merchantability, satisfactory quality, fitness for a particular purpose, compatibility with other software products or non-infringement.

12.6 Client represents that it has and will maintain or will acquire sufficient quantities of fully valid licences (e.g. software licences, client access licences, subscription agreements for cloud-based software and/ or service plans) for all Third Party Software to fully support its requisite number of users thereof under Client's agreement with INGENTIVE and/ or the Third Party Software licensor.

13. Remedies; Limitation of Liability

13.1 Either party's breach of its obligations under clauses 7 or 9 or Client's breach of any restriction on its use, copying or transfer of Software under this Agreement would irreparably injure the other party, which could not adequately be compensated by monetary damages. Accordingly, each party may seek and obtain injunctive relief from the breach or threatened breach of such provisions in addition to and not in limitation of any other legal remedies.

13.2 INGENTIVE's sole liability and Client's sole and exclusive remedies under INGENTIVE's limited warranty in clause 12.2 above are as follows: if notified by Client in writing of a problem during the Warranty Period, INGENTIVE will use all commercially reasonable efforts at no charge to repair or replace each item of INGENTIVE Software and/ or Modification (including without limitation Client Customisations) to make the item operate as warranted; provided that, if INGENTIVE is unable to make the affected item operate as warranted within a reasonable time, INGENTIVE, at its sole option, may instead refund to Client the licence or other fees paid by Client to INGENTIVE for the non-conforming item to the extent paid by Client.

13.3 Further to clause 12.3, Client's sole remedy with respect to Third Party Software will be to the licensor, manufacturer or vendor of such Software and as provided in the agreement between Client and such third party. Client acknowledges and agrees that it shall have no remedy against INGENTIVE (and INGENTIVE shall have no liability to Client) in respect of the Third Party Software.

13.4 Neither party will be liable for any Force Majeure Event. The affected party will promptly inform the other party of any Force Majeure Event, and either party may require a renegotiation of the schedules set forth in any open Attachments. If a Force Majeure Event continues for more than 60 days, either party may terminate the Agreement or any open Attachment.

- 13.5 No action, regardless of form, relating to or arising out of the Services under this Agreement may be brought by either party more than two years after the date of completion of the Services.
- 13.6 Neither party will be liable to the other party for any loss of profits (except in the case of Client's liability, in respect of any profit element within any fees that would have become due to the INGENTIVE if the Agreement and/or Attachment had been properly performed in accordance with its terms by Client) , loss of revenue, loss of anticipated savings, loss of goodwill, loss of or corruption of or damage to any data (in each case whether those losses are direct or indirect) or for any indirect, consequential, special or punitive damages incurred or suffered by the other party in any circumstances. Subject to the following sentence and clause 13.3, each party's total liability to the other under each Attachment to this Agreement, whether arising in contract, tort or otherwise, will be limited to the total monies paid or payable under the relevant Attachment. Nothing in this clause 13.6 or elsewhere in the Agreement shall exclude or limit either party's liability for death or personal injury resulting from negligence, or in relation to any claim based on fraud, or in relation to any claim for breach or misuse of Intellectual Property Rights or Confidential Information, or a breach of the obligations imposed by s12 Sale of Goods Act 1979 or s2 Supply of Goods and Services Act 1982, or for any claim under a party's indemnification obligations under this agreement or in respect of any liability which cannot be limited or excluded by law.
- 13.7 INGENTIVE shall not be liable under or in connection with this Agreement, whether for any delay or failure to provide any Software and/or Services or otherwise, caused by:
- 13.7.1 any act or omission of Client which is contrary to its obligations under the Agreement;
- 13.7.2 any failures of any Third Parties to provide the Software and/or Services; and/or
- 13.7.3 any disruption to Client's system which occurs while any Software or Subscription Services are being installed.
- 13.8 Client acknowledges that INGENTIVE cannot select Software on its behalf and that INGENTIVE shall have no liability in respect of the suitability of any selected by Client. In the event that any advice was provided to Client by INGENTIVE, Client acknowledges that advice was not intended to be relied upon and was provided as is without any warranty of any kind from INGENTIVE and shall have no liability in relation thereto.
- 13.9 INGENTIVE shall not be liable for defects in Software resulting from abnormal conditions of use or any act, neglect or default of Client or any third party.
- 13.10 Except as expressly and specifically provided in the Agreement, Client assumes sole responsibility for results obtained from the use of the Software and/or Services by Client, and for conclusions drawn from such use. INGENTIVE shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to INGENTIVE by Client in connection with the Software and/or Services, or any actions taken by INGENTIVE at Client's direction.
- 13.11 This Agreement sets out the full extent of INGENTIVE' obligations and liabilities in respect of the supply of the Software and the Services.
- 14. Indemnification**
- 14.1 INGENTIVE will indemnify, defend and hold Client (and its officers, directors and employees) ("**Client Indemnitees**") harmless from and against any and all claims, losses, liabilities, damages, costs and expenses sought or otherwise claimed by a third party (including reasonable legal fees incurred by Client in connection therewith) (each, a "**Third Party Claim**") to the extent arising out of an allegation that any INGENTIVE Deliverable provided to Client hereunder infringes on any copyright, patent or other proprietary right of any third party or misappropriates any trade secret of a third party (each, an "**Infringement Claim**").
- 14.2 If an Infringement Claim results in Client's use of any INGENTIVE Deliverable being enjoined or otherwise precluded, INGENTIVE, at its sole option, will
- 14.2.1 replace the affected INGENTIVE Deliverable with a compatible, functionally-equivalent and non-infringing product;
- 14.2.2 modify the INGENTIVE Deliverable to create a compatible, functionally-equivalent and non-infringing INGENTIVE Deliverable; or
- 14.2.3 obtain a licence for Client to continue to use the affected INGENTIVE Deliverable. Provided that, if none of the foregoing is commercially practicable as determined by INGENTIVE, Client's licence or other right to use the affected INGENTIVE Deliverable will terminate and INGENTIVE will refund the fees paid by Client for the INGENTIVE Deliverable, amortised on a straight line basis over 36 months.
- 14.3 INGENTIVE's performance of its obligations under this clause 14 represents Client's sole remedy and INGENTIVE's total liability and full obligation to Client with respect to any Infringement Claim, and Client will have no other claims against INGENTIVE in connection with or as a consequence of any such Infringement Claim.
- 14.4 INGENTIVE will have no obligation hereunder for any Infringement Claim which arises by reason of:
- 14.4.1 the modification of or the misuse of any INGENTIVE Deliverable by Client or a third party;
- 14.4.2 the combination, operation or use of any INGENTIVE Deliverable by Client or a third party with equipment, software or data not supplied by INGENTIVE if an Infringement Claim would not have occurred but for such combination, operation or use; or
- 14.4.3 Client's failure to use an updated or modified INGENTIVE Deliverable provided by INGENTIVE to avoid an Infringement Claim.
- 14.5 Client will defend, indemnify and hold harmless INGENTIVE (and its officers, directors and employees) ("**INGENTIVE Indemnitees**") from and against any and all Third Party Claims to the extent arising out of:
- 14.5.1 Client's installation of Third Party Software or any Third Party Subscription Services without INGENTIVE's assistance; or
- 14.5.2 any allegation that INGENTIVE's use of Client Materials infringes on any copyright, patent or other proprietary right of any third party or misappropriates any trade secret of a third party (each, a "**Client Infringement Claim**").
- 14.6 Client's performance of its obligations under this clause 14.6 represents INGENTIVE's sole remedy and Client's total liability and full obligation to INGENTIVE with respect to any claim or demand described under this clause 14.6 and INGENTIVE will have no other claims against Client in connection with or as a consequence of any Client Infringement Claim. Client will have no obligation hereunder for any Client Infringement Claim which arises by reason of:
- 14.6.1 the modification or misuse of any Client Materials by INGENTIVE;

- 14.6.2 the combination, operation or use of any Client Materials by INGENTIVE with equipment, software or data not supplied by Client if a Client Infringement Claim would not have occurred but for such combination, operation or use; or
- 14.6.3 INGENTIVE's failure to use updated or modified Client Materials provided by Client to avoid a Client Infringement Claim.
- 14.7 The indemnified party will provide prompt written notice of any Third Party Claim subject to indemnity to the indemnifying party; provided that failure to give such notice will not reduce the indemnifying party's obligations under this clause 14 except to the extent that the indemnifying party is prejudiced thereby. The indemnifying party will control the defence and settlement of any Third Party Claim hereunder; provided that the indemnified party may participate in the defence and settlement of such Third Party Claim with its own counsel at its own expense. The indemnified party will provide all reasonable cooperation and assistance requested by the indemnifying party in the defence and settlement of any Third Party Claim at the indemnifying party's expense. The indemnifying party will not be responsible for any costs incurred or compromise made by the indemnified party without the indemnifying party's prior written consent. The indemnifying party may not enter into any settlement that imposes a financial obligation on or otherwise materially adversely impacts the indemnified party without the indemnified party's prior written consent.

15. INGENTIVE Right to Vary these General Terms & Conditions

- 15.1 Subject to Clause 15.3, INGENTIVE may at its sole discretion update and/ or amend these General Terms & Conditions at any time, including but not limited to, in the following circumstances:
 - 15.1.1 changes in relevant laws and regulatory requirements; and/or
 - 15.1.2 changes imposed by Microsoft and/or any other Third Party.
- 15.2 Any change to these General Terms & Conditions made by INGENTIVE shall be made without notice to the Client by updating the version of the General Terms & Conditions provided at www.ingentive.com
- 15.3 INGENTIVE confirms and agrees that the version of the General Terms & Conditions applicable to any Attachment shall be the latest version of the General Terms & Conditions in force as at the date of execution of the Attachment and shall not be varied during the Term. Any change to the General Terms & Conditions shall not affect any Agreement in force as at the date the change is made and the updated General Terms & Conditions shall only apply to any subsequent Agreements entered into between the parties pursuant to a new Attachment.

16. General

- 16.1 This Agreement (including any executed Attachments):
 - 16.1.1 embodies the final, complete and exclusive understanding between the parties with respect to its subject matter;
 - 16.1.2 replaces and supersedes all previous oral or written agreements, understandings or arrangements between the parties;
 - 16.1.3 may be signed in counterparts, each of which will be an original and both of which will constitute one and the same document; and
 - 16.1.4 may only be amended in a writing signed by each party hereto.

- 16.2 Each party acknowledges that in entering into the 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 the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 16.3 The failure of either party to enforce a provision of this Agreement will not be deemed a waiver of such provision or of the right of such party thereafter to enforce such provision.
- 16.4 The parties expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.
- 16.5 Notices hereunder will be effective when received and will be sufficient if given in writing, hand-delivered, sent by email with confirmation of receipt, sent by first class mail, return receipt requested and postage prepaid, or sent by overnight courier service and addressed to the signatories below at the addresses set forth on the cover page above.
- 16.6 The parties hereto are independent of each other, and no agency, partnership, joint venture or employer-employee relationship is intended or created by this Agreement. Neither party will have the power to obligate or bind the other party.
- 16.7 This Agreement will be governed by and construed in accordance with the laws of England and any claim or matter arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English courts.
- 16.8 If any term of this Agreement is or becomes unenforceable or invalid, such invalidity or unenforceability shall not affect the other terms of this Agreement which shall remain in full force and effect.
- 16.9 If any term of this Agreement is or becomes invalid or unenforceable but would be valid or enforceable if some part of it were deleted or modified by the parties, the term in question shall apply with such modification as may be necessary to make it valid and enforceable. The parties shall act reasonably and in good faith to agree any such modification.
- 16.10 With Client's prior written consent, INGENTIVE may use Client's name in describing or promoting INGENTIVE's Services on INGENTIVE's Website and in its marketing materials or other documents listing INGENTIVE's qualifications, experience and companies for which INGENTIVE has provided professional services. Client also acknowledges its willingness to discuss its participation in case studies with INGENTIVE on INGENTIVE's request. Client will receive and approve the final version of any and all such materials prior to public release.
- 16.11 Either party may assign this Agreement in its entirety, whether by operation of contract, law or otherwise, to any entity that acquires control of the assigning party, whether by merger, sale or otherwise, and INGENTIVE, on written notice to Client, may assign this Agreement in its entirety to any of its affiliates. Any other assignment of the Agreement will require the prior written consent of the other party, which will not be unreasonably withheld or delayed. This Agreement will bind each party's successors and assigns and will inure to the benefit of each party's successors and assigns.
- 16.12 The parties do not intend that any term of this Agreement will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
- 16.13 The following cancellation and rescheduling policy will be applied when there are frequent unexplained cancellations of appointments by the Client. For avoidance of doubt, it is not applied if there is a 'one off' genuine business or

compassionate reason for such cancellations in INGENTIVE's reasonable opinion.

- 16.14 Once the high-level project plan has been agreed between the parties in the Attachment, INGENTIVE will assign resources for each of the required project tasks based on such a plan. Should Client miss deadlines or delivery dates as specified in the plan resulting in a need to reschedule project resources, a Change Request as set out in Clause 3, Services, of this Agreement will be created and a fee may be charged to cover the impact on timelines and resources. The Client acknowledges and agrees that any postponement of the planned activities by the Client may cause delay and result in the rescheduling of subsequent activities.
- 16.15 INGENTIVE requires the Client to give a minimum of one working day (24 hours) written notice of cancellation or postponement of any planned project activities (or group of activities). Unless agreed otherwise in writing by INGENTIVE, failure to provide such notice may result in a penalty sum equivalent to the duration of the planned activity (minimum one day) and any additional costs that may be incurred due to the change in timeline. Such payment shall be made in accordance with Clause 5, Fees and Payments of this Agreement.
- 16.16 INGENTIVE will provide at least three days (72 hours) written notice of any cancellation of planned activities to the Client.

SCHEDULE 1 – MANAGED SERVICES

SCHEDULE

1. Services

- 1.1 The terms set out in this Schedule 1 shall apply to Managed Services provided by INGENTIVE to Client under the Attachment.
- 1.2 The Managed Services shall comprise:
- 1.2.1 Under the “base management fee” INGENTIVE shall:
- 1.2.1.1 provide the Dedicated Services;
- 1.2.1.2 conduct periodic Performance Reviews;
- 1.2.1.3 retain all Client Configuration and Development Documents;
- 1.2.1.4 train and support Client on Client configuration; and
- 1.2.1.5 arrange for remote access to the systems provided under the Attachment.
- 1.2.2 Under the “bank of hours” or “time and materials” provision, INGENTIVE shall provide:
- 1.2.2.1 telephone assistance in the use of Supported Software during the Designated Hours in accordance with the service request procedure set out in the INGENTIVE Support Client Operations Manual;
- 1.2.3 telephone assistance in the use of Supported Software during Extended Hours and Out of Hours, subject to agreement with INGENTIVE via the service request procedure detailed in the INGENTIVE Support Client Operations Manual;
- 1.2.4 standard available corrections for any errors in Supported Software made known to INGENTIVE in accordance with the service request procedure in the INGENTIVE Support Client Operations Manual;
- 1.2.5 software code error determination and resolution on INGENTIVE Software and Supported Modifications. INGENTIVE will continue to support legacy versions of the INGENTIVE Software and Supported Modifications for a minimum of two prior releases;
- 1.2.6 software configuration error resolution and resolution status reports on INGENTIVE Software and Supported Modifications;
- 1.2.7 software licensing error resolution and resolution status reports on INGENTIVE Software and Supported Modifications;
- 1.2.8 software performance resolution and resolution status reports on INGENTIVE Software and Supported Modifications; and
- 1.2.9 reasonable assistance with the rectification of database corruption caused by an error in Supported Software provided that Client carries out the recommended data backups and restore test procedures.
- 1.3 The Managed Services do not include:
- 1.3.1 the diagnosis and rectification of any fault resulting in any way from any software other than the Supported Software or any computer or communications hardware or cabling and equipment or any facilities or infrastructure or anything affecting any relevant computer system or environment of Client;
- 1.3.2 the use of the Supported Software on equipment other than on the Designated Equipment;
- 1.3.3 any services supplied which arise from any failure of Client to implement INGENTIVE’s recommendations of which Client has

been notified in respect of solutions to faults in the Supported Software;

- 1.3.4 any services supplied which arise from any breach by Client of any of its obligations under any maintenance agreement in respect of computer hardware or other equipment used in conjunction with the Supported Software;
- 1.3.5 rectification of data mis-postings caused by any person other than INGENTIVE;
- 1.3.6 detailed analysis of data postings;
- 1.3.7 support of modifications to Supported Software made by Client and any consequences arising;
- 1.3.8 training;
- 1.3.9 database administration or system training for Supported Software; and/ or
- 1.3.10 any services to enable or maintain the use by Client of any INGENTIVE product modules or components thereof contained within INGENTIVE Software that have not been authorised and activated by INGENTIVE for use by Client and which are not specified in the supported services or otherwise agreed with INGENTIVE in writing.
- 1.4 INGENTIVE shall have no responsibilities in connection with the Supported Software other than as expressly assumed by it under this Agreement or otherwise in writing signed by the parties. Client will need to enter into a separate technical services agreement with INGENTIVE if it requires technical software services not contemplated by this Agreement.
- ### 2. Term and Termination
- 2.1 The Managed Services will commence on the Managed Service Commencement Date and will continue for the Managed Service Initial Term. Unless terminated by either party in accordance with clause 4, the Managed Services shall renew for an additional 12 month period (“**Managed Services Renewal Term**”).
- 2.2 Either party may terminate an Attachment for Managed Services on the expiry of the Managed Service Initial Term, or the anniversary of each Managed Services Renewal Term, by serving written notice, such written notice to be served no less than 3 months prior to the expiry of the Managed Service Initial Term or the expiry of the Managed Services Renewal Term (as applicable).
- ### 3. Conditions for Providing the Services
- 3.1 INGENTIVE shall confirm ability to perform the Managed Services when the Support Transition Process, as detailed in the INGENTIVE Support Client Operations Manual, has been completed.
- 3.2 For any business processes, system configuration and bespoke system developments that have not been subjected to an agreed support transition to INGENTIVE, INGENTIVE will use reasonable endeavours to resolve any support incidents logged by Client with INGENTIVE and will charge for this at the T&M Rates.
- 3.3 INGENTIVE shall provide the Services to Client subject to the following conditions:
- 3.3.1 that Client provides INGENTIVE with remote access to either enable INGENTIVE to copy Client’s database or view remotely on screen any reported problem with the Supported Software;
- 3.3.2 that INGENTIVE is able to replicate Client’s problem as reported using reasonable efforts to do so and that printouts and other relevant information available to Client and

- reasonably required by INGENTIVE are made available to INGENTIVE;
- 3.3.3 that any Client employee requesting a Managed Service is sufficiently trained to enable INGENTIVE to provide the Managed Service and in particular, but without limiting the generality of the foregoing, is:
- 3.3.3.1 capable and trained to copy files and use Windows Explorer;
- 3.3.3.2 capable and trained to import and export Supported Software objects;
- 3.3.3.3 qualified with "Super-User" or other adequate permission to debug and solve problems with the help of INGENTIVE staff;
- 3.3.3.4 familiar with the functions and operation of that part of Client's computer system in respect of which the Managed Services are required; and
- 3.3.4 that if the query in respect of which Client requests support from INGENTIVE is a matter which has been fixed in a later version of the Supported Software to the version installed on Client's computer system then INGENTIVE may suggest that Client install and use such later version of the Supported Software provided this is the only practical way of providing a solution. Upgrading Client's software shall be part of the Services supplied pursuant to this Agreement but will be subject to additional charges as detailed in the Attachment (or otherwise in writing) that Client would need to first approve. In such circumstances, should Client not choose to upgrade their system, then INGENTIVE may not be able to provide further assistance with this particular issue.
- 3.4 The Managed Services will be provided by telephone, email or remote access. Where Client requests Managed Services to be provided from its premises, INGENTIVE may agree to provide this subject to agreement of any additional fees at the T&M Rates plus expenses.
- 3.5 This Agreement does not grant to Client any rights to use Third Party Software. Any such rights are subject to a separate agreement between Client and the Third Party. If at any time Client does not have a licence to use all components of the Supported Software then INGENTIVE may suspend the provision of the Managed Services under this agreement during any such period.
- 3.6 Where Client has a licence to use Perpetual Software licensed by a Third Party, it will also be required to enrol in the Third Party Enhancement Plan as a pre-condition to receiving the Managed Services. Payments for the Third Party Enhancement Plan are due and payable to the relevant Third Party (via INGENTIVE) twelve months in advance. Should such payments not be received by INGENTIVE by the relevant renewal date, INGENTIVE shall not be able to continue to provide Managed Services to Client. Client may be able to reactive the Third Party Enhancement Plan and the Managed Services by paying a re-activation fee (as set by the Third Party from time to time).
- 4.4 Client confirms that it is fully aware that Client's failure to fully train sufficient staff both on initial installation of the Supported Software and subsequently during its use, will jeopardise the efficient use and operation of the Supported Software and the effective provision of Managed Services.
- 4.5 Client shall provide a copy of Client's database to INGENTIVE as reasonably requested in the event that remote access cannot be provided to INGENTIVE by Client.
- 4.6 Client shall test upgrades, fixes and enhancements to the Supported Software on a test system in accordance with INGENTIVE's reasonable instructions before installing the same on the Designated Equipment and going live (which Client accepts is an industry standard practice) and INGENTIVE shall have no responsibilities or liability under this Agreement in the event of Client not doing reasonable testing and proceeding to install and use the Supported Software on the Designated Equipment in a live commercial production environment without such testing.
- 4.7 Client agrees that to cover the event of any failure, it is Client's responsibility to check that it can reinstall the Supported Software and restore backups of its data in accordance with good industry practice. Client acknowledges and agrees it is entirely responsible for the security of its computer systems and data, to maintain sufficient and regular security copies of its data and to implement disaster recovery plans that are in line with the risk posed by any potential loss of data. Client accepts that any data lost from the time of the last restorable backup and any failure of the Supported Software may have to be re-entered and that INGENTIVE has no responsibility for any loss of data or the effects thereof.
- 4.8 Any Attachment entered into for Managed Services shall be exclusive and Client shall not request, permit or authorise any Third Party to provide Managed Services (or services similar to the Managed Services) in respect of all or part of the Supported Software during the Services Term.
- 4.9 Client shall cooperate fully with INGENTIVE's personnel in the diagnosis of any error or defect in the Supported Software.
- 4.10 Client shall make available to INGENTIVE free of charge all information facilities and services reasonably required by INGENTIVE to enable INGENTIVE to perform the Managed Services including without limitation computer runs, memory dumps, printouts and data preparation.
- 4.11 Client shall provide at Client's expense such telecommunication and network facilities as are reasonably required by INGENTIVE for testing and diagnostic purposes by remote access.
- 4.12 Client shall, for the purposes of this Agreement, afford to the authorised personnel of INGENTIVE during normal working hours or as otherwise agreed access to any of Client's relevant premises and shall provide adequate free working space and such other facilities at such premises as may be reasonably requested by INGENTIVE where these are required to provide the Managed Services. Client shall comply with its obligations under applicable health and safety regulations with respect to the provision of such access and facilities to INGENTIVE.

4. Responsibilities of Client

- 4.1 Unless INGENTIVE otherwise agrees in writing, Client shall install the Supported Software on the Designated Equipment in accordance with instructions and recommendations given by INGENTIVE.
- 4.2 Client agrees to use the Supported Software in accordance with good industry practice.
- 4.3 Client acknowledges and accepts that the efficient use and operation of the Supported Software may be dependent on the installation by Client of upgrades and enhancements to the Supported Software.

5. Responsibilities of INGENTIVE

- 5.1 INGENTIVE will employ personnel with skill, knowledge and training required for the performance of the Services and the Services will be performed in a professional manner in accordance with standard software industry practices in the United Kingdom.

- 5.2 INGENTIVE will take all practical steps to ensure that its personnel and agents will, whenever on Client's premises or using remote Client system access facilities for testing or diagnostic purposes, obey all reasonable security and health and safety standards, procedures and directions notified to it by Client.
- 5.3 INGENTIVE shall provide the Managed Services during the Designated Hours. Where Client requests Managed Services during Extended Hours or Out of Hours, INGENTIVE shall be entitled to apply additional charges beyond its standard rate card for work done during these times, unless agreed otherwise in the Attachment.

6. Charges

- 6.1 Work which is out of scope of the Managed Services will be quoted for separately at the T&M Rates.

Retainer plus T&M

- 6.2 Where the Attachment specifies that pricing is "Retainer plus T&M Rates", the Charges will comprise a base management fee plus time actually spent by INGENTIVE in resolving any open support issues. The base management fee (the retainer element) will be billed annually in advance and the T&M Rates will be billed monthly in arrears.

Premium Pricing

- 6.3 Where the Attachment specifies that pricing is "Premium", Client shall be entitled to receive the Managed Services up to the number of pre-bought hours (the "**Bank of Hours**"). Usage above the Bank of Hours will be subject to additional charges.
- 6.4 A base management fee, as set out in the Attachment, shall be charged for the "Premium" service, plus the costs of the Bank of Hours selected by Client, and shall be invoiced quarterly in advance.
- 6.5 Changes to the installed license base, modification and customisations between contract execution date (regardless of whether it is before or after the Full Support Commencement Date) may result in an increase in the Charges.
- 6.6 INGENTIVE shall, as soon as it is able, notify Client Contact where it is close to or has reached the threshold of the Bank of Hours and/ or if excessive usage is noted and shall work to identify root cause.
- 6.7 Where additional resource by INGENTIVE is being expended on a continued basis then INGENTIVE reserves the right to increase the maintenance fees and charge for on-going over-use.
- 6.8 Client is liable for additional costs if INGENTIVE's recommended method for diagnosis and access is not followed.

Schedule A: Service Level Agreement

Super-Users will be authorised to log incident calls with the INGENTIVE ServiceDesk. All incidents logged to the INGENTIVE ServiceDesk will be entered into a Call Management system and the call reference will be given to the caller for future reference.

Call Priority

Call priority will be determined by Client at the time of logging the incident call. The call priority may be changed by Client with agreement from INGENTIVE or by INGENTIVE from time to time in consideration of any change in the actual circumstances.

In the event that an open ticket is with Client awaiting response for 14 days, the incident may be closed at INGENTIVE's sole discretion.

Level	Priority	Description
P1	Mission Critical	Non-performance of software is impacting significantly on the entire business of Client, i.e. users cannot use or log into the application.
P2	High	Impacting on a particular area of the business of Client, i.e. a whole department, or depot or significant number of users where there is a particular process that has an imminent time deadline cannot be completed.
P3	Medium	No critical issue causing significant disruption to a small number of users, but with no immediate impact on the business of Client, i.e. workaround available or no imminent deadline.
P4	Low	No critical fault, minor inconvenience with no impact on business, i.e. advice required.

Service Level Agreement (SLA)

For the agreed Managed Service, an SLA is included. INGENTIVE shall respond to Client according to the times indicated in the following table, once a call has been logged with INGENTIVE.

Level	Priority	Confirmation of Call Logging	Operations Team Response Time	Frequency of Updates
P1	Mission Critical	30 minutes	1 Hour	4 hourly
P2	High	1 hour	2 Hour	8 hourly
P3	Medium	4 hours	2 Days	Weekly
P4	Low	Next day	6 Days	2 weekly

SCHEDULE 2 – SUBSCRIPTION SCHEDULE

1. Subscription Process

- 1.1. By placing an order with INGENTIVE for a Subscription for Microsoft Online Services, Client represents and warrants that Client accepts the Microsoft Online Services Terms.
- 1.2. Client understands that Microsoft may accept or reject any Client as a customer of Microsoft or may refuse to supply the Subscription Services to any Client at Microsoft's absolute discretion. If, after an Attachment for a Subscription has been executed, Microsoft rejects a Client as a customer of Microsoft, or refuses to supply Subscription Services to any Client, either Client or INGENTIVE may terminate the Attachment immediately without liability to the other by giving written notice to the other party. In the event of termination under this paragraph 1.2 and without prejudice to any liability for any breach of the Agreement by Client that there may be, any fees paid by Client for the period after termination shall be refunded to Client by INGENTIVE. Such refund constitutes Client's sole and exclusive remedy and INGENTIVE's entire liability for any termination under this paragraph 1.2.

2. Rights granted

- 2.1. Client acknowledges and agrees that its right to access and use the Microsoft Online Services and to install and use Software included with the Subscription is granted to Client by Microsoft (and not by INGENTIVE) and is subject to the Microsoft Online Services Terms.
- 2.2. Client's rights to any of the Subscription Services does not include any license, right, power or authority to cause any part of the Subscription Services to become subject to the terms of an excluded license. An **"excluded license"** is any license, such as an open source software license, that requires as a condition of use, modification or distribution of software subject to the excluded license, that it or other software combined or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.
- 2.3. Client shall not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Subscription Services available to any third party except as expressly permitted under the Subscription.
- 2.4. Client acknowledges and agrees that any warranty about the Subscription Services is given by Microsoft not by INGENTIVE and is as set out in the Microsoft Online Services Terms.

3. Supply of the Subscription Services

- 3.1. Client acknowledges and agrees that:
 - 3.1.1. Microsoft may modify the Subscription Services, or release a new version of the Subscription Services at any time and for any reason including, to address customer needs or otherwise address competitive demands, to respond to a government regulation, order, or law, or to advance innovation in the Subscription Services offerings;
 - 3.1.2. Microsoft may add new features or functionality to, or remove existing features or functionality from, the Subscription Services;
 - 3.1.3. INGENTIVE may perform certain functions associated with the purchase, activation, support and management of the Subscription and Subscription Services. Those functions may

be performed by any processes or tools used by INGENTIVE; and

- 3.1.4. from time to time INGENTIVE may implement such updates or changes to continue to perform its functions as INGENTIVE in its sole discretion deems appropriate.
- 3.2. INGENTIVE may provide Subscription Services that is identified as academic, charity or government. Client must have Microsoft's approval to purchase such Subscription Services and Client accepts that it may only purchase such Subscription Services if Client meets Microsoft's qualification criteria for such Subscription Services.
- 3.3. Client acknowledges that it is solely responsible for determining and selecting the appropriate Subscription Services. While INGENTIVE may place orders for Subscriptions on Client's behalf, INGENTIVE shall not be responsible for selecting or determining the appropriate Subscription Services.
- 3.4. Client understands and accepts that Microsoft may make certain service levels commitments to Client in the Microsoft Online Services Terms. If Client wishes to make a claim on the Microsoft Online Services SLA, Client must notify details of its claim to INGENTIVE in writing (**"Microsoft Online Services SLA Claim"**). Client understands that the Microsoft Online Services SLA Claim will be subject to Microsoft's standard Microsoft Online Services SLA review process. Any credit that Microsoft agrees to pay in respect of the Microsoft Online Services SLA Claim shall be credited to Client promptly following its receipt by INGENTIVE. Client accepts that any credit to which it is eligible shall not exceed the total monthly estimated retail price quoted by Microsoft for the Subscription that is the subject of the Microsoft Online Services SLA Claim. Client acknowledges and accepts that outages may be audited on a per Subscription or per service basis at any time.

4. Microsoft Minimum Support

- 4.1. INGENTIVE shall provide the Microsoft Minimum Support from the Microsoft Minimum Support Date at no charge to Client. Microsoft Minimum Support shall comprise an online portal and/ or email contact to enable Super-Users to log a support ticket at any time. For the avoidance of doubt except as provided in this paragraph 4.1 or as agreed in accordance with paragraph 5.3, INGENTIVE will be under no obligation to provide Managed Services to users of the Subscription Services.
- 4.2. Client shall appoint not more than two Super-Users who shall have authority to obtain and receive the Microsoft Minimum Support on behalf of Client. Client shall notify INGENTIVE in writing of the identity of the Super-Users. Client may replace the individuals who are appointed as the Super-Users from time to time and shall notify INGENTIVE in writing of the identity of any such replacement.
- 4.3. Client may purchase enhanced Managed Services separately. Such enhanced support shall be agreed by way of the Attachment and will be subject to the additional terms set out in the Support Schedule.

5. Other rights and obligations

- 5.1. Client understands and accepts that Microsoft or its audit-related agents shall have access to any books, documents, records, papers, or other materials of INGENTIVE related to this Agreement (the **"Relevant Records"**) and Client consents to the disclosure of the Relevant Records to Microsoft or its audit-related agents if requested by Microsoft.
- 5.2. Client must not remove any copyright, trademark or patent notices from any of the Subscription Services.

6. Payment

- 6.1. Client shall pay the price for the Subscription as specified in the Attachment (the “**Price**”). INGENTIVE reserves the right to charge to Client the amount of any mistake, error or omission in the Price by INGENTIVE or Microsoft; for the avoidance of doubt, such Price may, in part, be based on Client Information.
- 6.2. Unless otherwise agreed in writing by INGENTIVE the Price shall be paid by direct debit. Payment of the Price is due in full in pounds sterling without deduction or set-off within fourteen days of the date of invoice (unless otherwise agreed). Time for payment is of the essence.
- 6.3. The Price of some Subscription Services is based on the usage of the Subscription Services (Consumption Subscriptions) and Client understands and accepts that it is responsible for and shall pay the Price for all use of such Subscription Services as calculated by INGENTIVE or by Microsoft.
- 6.4. Client understands and accepts that:
 - 6.4.1. it must pay the Price for any Commitment Offering purchased by Client irrespective of whether or not Client has used any or all of the Commitment Offering; and
 - 6.4.2. any part of the Commitment Offering that has not been used at the end of the relevant Term will expire and may not be carried forward to a subsequent Term.

7. Suspension

- 7.1. Client acknowledges and agrees that Microsoft may disable the supply of Subscription Services for legal or regulatory reasons and INGENTIVE will use reasonable endeavours to notify Client of the disablement of a Subscription as soon as commercially reasonable. If Microsoft suspends the supply of Subscription Services to Client, INGENTIVE will also suspend billing to Client for the relevant Subscription Services until the suspension ceases unless the suspension is due to Client’s failure to make payment under this Agreement or for any other breach of this Agreement.
- 7.2. Without limiting its other rights or remedies, INGENTIVE shall have the right to suspend the supply of Subscription Services and Microsoft Minimum Support and/ or all further deliveries of the Subscription Services if Client fails to pay any amount due under the Agreement within seven (7) days of the due date for payment.
- 7.3. Client acknowledges and accepts that, notwithstanding any suspension of the Subscription Services by INGENTIVE pursuant to this paragraph 7, INGENTIVE may continue to incur expenses and/ or charges from Microsoft which shall be payable by Client.

8. Term and termination

- 8.1. Each Subscription provided in accordance with this Schedule 2 shall commence on the Subscription Start Date specified in the Attachment.
- 8.2. Fixed Term Subscriptions are sold for the Subscription Term specified in the relevant Attachment, commencing on the Subscription Start Date (“**Fixed Term**”). Unless otherwise agreed between the parties in writing or terminated as provided in this paragraph 8.2, Fixed Term Subscriptions will automatically renew at the end of the relevant term for a period equal to the original Subscription Term (“**Renewal Term**”). Either party may give written notice to the other party, not less than thirty (30) days before the expiry of the Fixed Term or the relevant Renewal Term, to terminate the Subscription at the end of the Fixed Term or the relevant Renewal Term, as the case may be, else the Subscription will automatically renew in accordance with this paragraph 9.2. Pricing for a Renewal Term will be INGENTIVE’s pricing in the price list in effect as of the commencement of the Renewal Term.
- 8.3. Consumption Subscriptions are billed based on actual usage in the preceding month and do not expire unless cancelled. Consumption Subscriptions can be cancelled at any time by either party giving not less than thirty (30) days written notice to the other party and any usage by Client will be billed in the next scheduled invoice date.
- 8.4. Without affecting any other right or remedy available to it, INGENTIVE may terminate a Subscription with immediate effect by giving written notice to Client if Client fails to pay any amount due under the agreement on the due date for payment and remains in default not less than seven (7) days after being notified in writing to make such payment.

9. Consequences of termination

- 9.1. If the Subscription is terminated by Client during the Fixed Term or any relevant Renewal Period otherwise than pursuant to paragraph 8.2, without prejudice to any other rights or remedies that INGENTIVE may have, Client shall pay INGENTIVE all costs, expenses and liabilities incurred or paid by INGENTIVE as a result of the termination of the Agreement (which may include any early termination charge imposed on INGENTIVE by Microsoft).
- 9.2. Upon termination of a Subscription, Client must migrate any Client Data to either a new Subscription with INGENTIVE, or some other service within ninety (90) days of the cancellation of the Subscription. The Client accepts that it may incur a charge for INGENTIVE’s assistance in migrating Client Data and agrees to pay all costs and expenses incurred by INGENTIVE as a result of any Client Data remaining in the possession or control of INGENTIVE or Microsoft on or after cancellation of the Subscription.