Ctrl Hub Limited Software as a Service Terms & Conditions

(A)   **Ctrl Hub Limited** incorporated and registered in England and Wales with company number 09483451 whose registered office is at 4 High Street, Stanley, County Durham, DH9 0DQ (**Supplier**) has developed a software application which it makes available to the subscribers via the internet.

(B)   The Customer wishes to use the Supplier's service in its business operations.

(C)   The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's software application subject to the terms and conditions of this Agreement.

Agreed

1.   **Interpretation**

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

Agreement	has the meaning given in clause 1.10.
Authorised Users	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2.4;
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Confidential Information	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.6;
Customer	the customer, as set out in the Order Form.
Customer Data	the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
Data Protection Legislation	the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation (*(EU) 2016/679*) and any other directly

	applicable European Union regulation relating to privacy.
Documentation	the documents made available to the Customer by the Supplier online via www.ctrl-hub.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services;
Effective Date	the date set out in the Order Form, or otherwise agreed in writing between the Supplier and the Customer;
Normal Business Hours	8.00 am to 6.00 pm local UK time, each Business Day;
Order Form	the form completed by the Supplier and sent to the Customer by email for approval, and which sets out the commercial terms of the order;
Services	the subscription services relating to the Software provided by the Supplier to the Customer under this Agreement via www.ctrl-hub.com or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation;
Software	the online software application provided by the Supplier as part of the Services known as "Ctrl Hub";
Subscription Fees	the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in the Order Form;
Subscription Term	has the meaning given in the Order Form;
Support Services Policy	the Supplier's policy for providing support in relation to the Services as made available at www.ctrl-hub.com or such other website address as may be notified to the Customer from time to time;
User Subscriptions	the user subscriptions purchased by the Customer

	pursuant to clause 8.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement;
Virus	anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
UK Data Protection Legislation	any data protection legislation from time to time in force in the UK including the General Data Protection Regulations, Data Protection Act 1998 or 2018 or any successor legislation.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

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

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

1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.

1.7   A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

1.8   A reference to writing or written includes faxes and e-mail.

1.9   References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

1.10   Each Order Form shall, together with the terms and conditions set out in this document, constitute a separate and independent agreement for the supply and use of the Software. Unless the context requires otherwise, references herein to "**this Agreement**" shall be construed as references to the agreement constituted by (a) this document and (b) a particular Order Form.

2.   **User Subscriptions**

2.1   Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to access and use the Services, the Software and the Documentation during the Subscription Term solely for the Customer's business operations.

2.2   In relation to the Authorised Users, the Customer undertakes that:

2.2.1   the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;

2.2.2   it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;

2.2.3   each Authorised User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed no less frequently than quarterly and that each Authorised User shall keep his password confidential;

2.2.4   it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within five (5) Business Days of the Supplier's written request at any time or times;

2.2.5   it shall permit the Supplier, or the Supplier's designated auditor, to audit the Services in order to establish the name and password of each Authorised User, and the Supplier's data processing facilities to audit compliance with this agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;

2.2.6   if any of the audits referred to in clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and

2.2.7   if any of the audits referred to in clause 2.2.5 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the relevant Order Form within ten (10) Business Days of the date of the relevant audit.

2.3   The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

2.3.1   is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

2.3.2   facilitates illegal activity;

2.3.3   depicts sexually explicit images;

2.3.4   promotes unlawful violence;

2.3.5   is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or

2.3.6   in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

    2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

        2.4.1.1 and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

        2.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

    2.4.2 access all or any part of the Services, Software and Documentation in order to build a product or service which competes with the Services, Software and/or the Documentation; or

    2.4.3 except as permitted by the terms of this Agreement, use the Services, Software and/or Documentation to provide services to third parties; or

    2.4.4 subject to clause 21.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services, Software and/or Documentation available to any third party except the Authorised Users, or

    2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services, Software and/or Documentation, other than as provided under this clause 2; and

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services, Software, and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer without the prior written consent of the Supplier.

3. **Additional User Subscriptions**

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in

the Order Form and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with either approval or rejection of the request, (such approval not to be unreasonably withheld). Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within five days of its approval of the Customer's request.

3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within thirty (30) days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in the Order Form and, if such additional User Subscriptions are purchased by the Customer part way through the Subscription Term or any subsequent period of subscription (as applicable), such fees shall be pro-rated for the remainder of the Subscription Term or then current period of subscription (as applicable).

4. **Services**

4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

4.2.1 planned maintenance carried out during any maintenance window notified by the Supplier from time to time; and

4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give customers reasonable notice in advance.

4.3 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and

absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

5. **Customer Data**

5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

5.2 The Supplier shall follow its archiving procedures for Customer Data. In the event of any loss, damage, destruction or alteration to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost, damaged, destroyed or altered Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with its archiving procedures. The Supplier shall have no further liability for any loss, damage, destruction or alteration to Customer Data. Further, the Supplier shall not be responsible for any loss, damage, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

5.3 The Supplier shall, in providing the Services, comply with its corporate privacy policy relating to the privacy and security of the Customer Data,available at www.ctrl-hub.com or such other website as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.

5.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

5.5 The parties acknowledge that:

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

5.5.2 Schedule 1 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (where **Personal Data** has the meaning defined in the Data Protection Legislation) and categories of Data Subject (as defined in the Data Protection Legislation);

5.5.3 the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this Agreement;

5.6 Without prejudice to the generality of clause 5.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the Personal Data in accordance with this agreement on the Customer's behalf;

5.7 Without prejudice to the generality of clause 5.4, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:

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

5.7.2 not transfer any Personal Data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:

5.7.2.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

5.7.2.2 the data subject has enforceable rights and effective legal remedies;

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

5.7.2.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

5.7.3 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

5.7.4 notify the Customer without undue delay on becoming aware of a Personal Data breach;

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

5.7.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 5.

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

5.9 The Customer consents to the Supplier appointing Amazon Web Services (or such other cloud hosting provider as agreed between the parties) as a third-party processor of Personal

Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5.

5.10 The Supplier may, at any time on not less than 30 days' notice, revise this clause 5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

6. **Supplier's Obligations**

6.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.

6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services and/or Software contrary to the Supplier's instructions, or modification or alteration of the Services and/or Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents and is subject to available internet connectivity which is outside of the Supplier's control. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:

6.2.1 does not warrant that the Customer's use of the Services and/or Software will be uninterrupted or error-free; or that the Services, Software, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

6.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services, Software

and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3   This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products, software and/or services which are similar to those provided under this Agreement.

6.4   Subject to clause 7.1.5, the Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7.   **Customer's Obligations**

7.1   The Customer shall:

7.1.1   provide the Supplier with:

7.1.1.1   all necessary co-operation in relation to this Agreement; and

7.1.1.2   all necessary access to such information as may be required by the Supplier;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

7.1.2   without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

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

7.1.4   ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

7.1.5   where appropriate, obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

7.1.6   ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

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

8.   **Charges and Payment**

8.1   The Customer shall, in accordance with this clause 8 and the Order Form, pay to the Supplier the Subscription Fees for the User Subscriptions.

8.2   The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

8.2.1   its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:

8.2.1.1   on the Effective Date for the Subscription Fees payable in respect of the Subscription Term;

8.2.1.2   on the first day of each calendar month (save for the avoidance of doubt the month in which the Effective Date occurs) during the Subsctiption Term; and

8.2.1.3   subject to clause 13.1, on the first day of each calendar month following the expiry of the Subscription Term, or as otherwise agreed between the parties in writing;

8.2.2   its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:

8.2.2.1   on the Effective Date for the Subscription Fees payable in respect of the Subscription Term; and

8.2.2.2   on the first day of each calendar month (save for the avoidance of doubt the month in which the Effective Date occurs) during the Subscription Term;

8.2.2.3 subject to clause 13.1, the first day of each calendar month following the expiry of the Subscription Term, or as otherwise agreed between the parties in writing,

and the Customer shall pay each invoice within fourteen (14) days after the date of such invoice.

8.3 If the Supplier has not received payment within fourteen (14) days after the due date, and without prejudice to any other rights and remedies of the Supplier:

8.3.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

8.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 All amounts and fees stated or referred to in this Agreement:

8.4.1 shall be payable in pounds sterling;

8.4.2 are, subject to clause 12.4.2, non-cancellable and non-refundable;

8.4.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.5 The Supplier shall be entitled to increase the Subscription Fees and the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 at the end of the Subscription Period upon thirty (30) days' prior notice to the Customer.

9. **Proprietary Rights**

9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services, Software and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, Software or the Documentation.

9.2 The Supplier confirms that it has all the rights in relation to the Services, Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

10. **Confidentiality**

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure

10.5   Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.6   The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

10.7   The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

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

10.9   The above provisions of this clause 10 shall survive termination of this Agreement, however arising.

11.   **Indemnity**

11.1   The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, Software and/or Documentation.

11.2   The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services, Software or Documentation infringes any patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

11.2.1   the Supplier is given prompt notice of any such claim;

11.2.2   the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and

11.2.3   the Supplier is given sole authority to defend or settle the claim.

11.3   In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two

(2) Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

11.4   In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

11.4.1   a modification of the Services, Software or Documentation by anyone other than the Supplier; or

11.4.2   the Customer's use of the Services, Software or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or

11.4.3   the Customer's use of the Services, Software or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

11.5   The foregoing and clause 12.4.2 state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

12.   **Limitation of Liability**

12.1   This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

12.1.1   arising under or in connection with this Agreement;

12.1.2   in respect of any use made by the Customer of the Services, Software and Documentation or any part of them; and

12.1.3   in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.2   Except as expressly and specifically provided in this Agreement:

12.2.1   the Customer assumes sole responsibility for results obtained from the use of the Services, Software and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for (a) any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or (b) any actions taken by the Supplier at the Customer's direction, or (c) any misuse by the Customer and/or

Authorised User(s) of the Services, Software and/or Documentation, or (d) any failure of any of the Customer's hardware;

12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

12.2.3 the Services, Software and the Documentation are provided to the Customer on an "as is" basis.

12.3 Nothing in this Agreement excludes the liability of the Supplier:

12.3.1 for death or personal injury caused by the Supplier's negligence; or

12.3.2 for fraud or fraudulent misrepresentation.

12.4 Subject to clause 12.2 and clause 12.3:

12.4.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

12.4.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

13. **Term and Termination**

13.1 This Agreement shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Subscription Term and, thereafter, this Agreement shall continue on a rolling monthly basis until either party provides the other party with one (1) calendar month's written notice of termination, unless otherwise agreed in the Order Form.

13.2 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if:

13.2.1 the Customer fails to pay any amount due under this 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;

13.2.2 the Customer commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of seven (7) days after being notified in writing to do so;

13.2.3 the Customer 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 ;

13.2.4 the Customer 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 the Customer with one or more other companies or the solvent reconstruction of the Customer;

13.2.5 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 the Customer 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 the Customer;

13.2.6 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 Customer;

13.2.7 the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;

13.2.8 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;

13.2.9 a creditor or encumbrancer of the Customer 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 Customer's assets and such attachment or process is not discharged within fourteen (14) days;

13.2.10 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.3 to clause 13.2.9 (inclusive);

13.2.11 the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

13.3 On termination of this Agreement for any reason:

13.3.1 all licences granted under this Agreement shall immediately terminate;

13.3.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

13.3.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten (10) days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

13.3.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

14. **Force Majeure**

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other

party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

15. **Conflict**

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

16. **Variation**

16.1   The Supplier reserves the right, subject to clause 16.2, to revise and amend the terms and conditions set out in this Agreement from time to time, upon giving reasonable notice, to reflect changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities.

16.2   No variation of an Order Form shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. **Waiver**

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

18. **Rights and Remedies**

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

19. **Severance**

19.1   If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2   If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. **Entire Agreement**

20.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

20.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

21. **Assignment**

21.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

22. **No Partnership or Agency**

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. **Third Party Rights**

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

24. **Notices**

24.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been

notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.

24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

25. **Governing Law**

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

26. **Jurisdiction**

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Executed on the date that appears on the front of this Agreement.

Schedule 1

Processing, Personal Data and Data Subjects

Data Subjects	The Personal Data processed shall concern the following categories of data subjects: (i) Employees, consultants and temporary workers; (ii) Suppliers.
Categories of Personal Data	The Personal Data processed shall concern the following categories of data only (please specify): (i) Name (ii) Job title (iii) any industry affiliate body number (iv) Address (v) Business email address (vi) Date of birth (vii) Commencement date (viii) Mobile telephone number (ix) Landline telephone number (x) Next of kin / emergency contact details
Special Categories of Data	Occupational health Biometric data
Processing Operations (i.e. scope, nature and purpose of processing)	Personal data is obtained and processed by Ctrl Hub in compliance and in accordance with its obligations under this Agreement. It is not processed in any other manner. Processing by Ctrl Hub is undertaken on the basis of the legitimate interests of the Customer, depending on the circumstances. The relevant legitimate interests identified (as at the date of this agreement) being the pursuit of its commercial activity and the requirement to ensure the safety and wellbeing of operatives engaged in the provision of services to the Customer. The types of Processing undertaken pursuant to this agreement are all necessary to achieving the legitimate aims and such processing does not have any adverse impact on (and in most cases provides a positive benefit to) the data subjects concerned. The Ctrl Hub system holds personal data which is relevant to a person's

	qualification and competence to perform their contracted role, as well as emergency contact information relevant to their health and safety. Processing includes storage, retrieval, organisation, consultation, combination, use, and other processing all in accordance with the above identified lawful grounds and purposes for processing.
Sub-processors	Amazon Web Services