



Terms and Conditions

Version 1.1 – April 2023



Introduction

These Terms and Conditions including all sections and appendices ("Terms") form part of our Entire Agreement with You. They explain what You can expect from Us and what We expect of You. Unless stated on Your Service Agreement You will also be bound by the terms and charges laid out below, so please read them carefully.

As We operate within regulated markets, We must ensure We're explicit about our services and terms. To assist, We have divided these Terms into clear sections, so You can find what You want, as quickly as possible.

If You have any questions or queries, please do not hesitate to contact Us.

We look forward to a long and successful relationship with You.



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Section One – General Terms

1. Interpretation

- 1.1 These Terms are provided by RRD Communications trading as ICA, (**"ICA" "Provider" "Us" "We"**) a limited business registered in England and Wales with registered number 03806568 whose registered office is at Communico House, Vale Road, Heaton Mersey, Stockport. SK4 3QR
- 1.2 The headings used in these Terms are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.3 Words imparting the singular shall include the plural and vice versa.
- 1.4 References to any gender shall include any definable gender.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

2. Definitions

Unless the context otherwise requires, the following definitions and interpretations shall apply to these Terms and to any Entire Agreement entered:

"Appropriate Location" shall mean your office location ("Premises") or a suitable location to provide remote delivery of your services.

"Available Services" means the Services offered by ICA from time to time. "Services" shall mean the deliverables specified within the Service Agreement.

"Business Day" means, any 8 hours between the hours of 8am and 5pm (other than Saturday, Sunday or Bank Holiday) on which We or You are open for normal business in the United Kingdom;

"Charges" the charges payable by You for the supply of the Services;

"Client" "You" "Your" means the receiver Goods and Services from ICA;

"Commencement Date" means the date on which the Service Agreement comes into force pursuant to Clause 7;

"Confidential Information" means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

"Controller", "Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Subject Access Request" "Processing" and **"appropriate technical measures"** shall have the meaning

expressed in Pt 2 Ch1 of the Data Protection Act 2018 (DPA2018) and Article 4 of the General Data Protection Regulation (GDPR);

"Data" means any data held by the "Client" and Processed by ICA;

"Data Protection Legislation" means any applicable law or regulation including but not limited to the Data Protection Act 2018 ("DPA2018") and the General Data Protection Regulation ("GDPR") relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the Use of personal data (including, without limitation,

the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party;

"Deliverables" "Service" means the goods and services to be provided by ICA to You as set out in the Entire Agreement;

"Entire Agreement" comprising of the signed Service Agreement, these Terms and Our Privacy Notice, as amended from time to time in accordance and that that shall apply unless specified in writing;

"Entire Agreement Renewal" means an automatic renewal of Your Entire Agreement for a further 12 months after the initial Minimum Term and each subsequent 12-month renewal thereafter;

"Equipment" means the equipment including but not limited to Deliverables including physical items, software, Intellectual Property and systems identified in the Service Agreement, Order Schedule or otherwise notified to You in writing that We will deliver, sell, rent, loan, maintain or service, subject to the provisions of the Service Agreement;

"Existing Installation" means existing infrastructure including cabling, electrical supplies, Equipment and other Services that ICA has not installed under the Services Agreement;

"Intellectual Property" shall include all patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to Use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Line" means a connection to Our network or that of our Third-Party Suppliers, whether direct or indirect;

"Platform" means Services accessed by a client login and provided by Us. This includes but it not limited to ticketing systems.

"Project Work" means one off Services provided by ICA to You that may include but not be limited to one off or large-scale work outside the Service and that would be subject to further Service Agreement;

"Proposal" means the description or specification of the Services provided in writing by ICA to the Client that can be signed or responded to in acceptance by way of Electronic Signature or other means agreed by both Parties to become the Services Agreement;

“Privacy Notice” shall mean the published document found on Our Website outlining the way ICA handle Your Personal Data and Your associated Rights;

“Parties” shall mean ICA, the Client and any others subject to the Service Agreement;

“Service Agreement” “Order Schedule” shall mean any Proposal or schedule for Services entered between ICA and You by Your signature or verified authorisation whether electronic or other means in accordance with Your accepting the Proposal and these Terms;

“Tariff” shall mean the charge published and applied to the Services We provide You;

“Third Party Suppliers” “Suppliers” shall mean software, products and services that are manufactured, developed, delivered, hosted and/or maintained by organisations external to ICA either supplied through ICA acting in the capacity as a reseller, agent or referrer only;

“Written Permission” shall mean any communication effected by electronic means including email, letter, Entire Agreement or other such amendment that indicates the Clients instructions.

3. Provision of Services

- 3.1 ICA is engaged in the business of providing professional services including IT Support, Telephony Systems and related Services and has reasonable skill, knowledge and experience in the industries in which it operates.
- 3.2 ICA shall provide the Services with reasonable skill and care expected from a leading service provider in the industries it operates within.
- 3.3 ICA shall provide the Services to the You in accordance with the Entire Agreement in all material respects.
- 3.4 Although We shall Use all reasonable endeavours to meet any performance dates specified time for delivery shall not be of the essence. The agreed dates for delivery of Equipment or performance of the Services are estimates only and a failure by ICA to comply with them shall not be a breach of the Entire Agreement.
- 3.5 ICA shall provide the Services described in the Service Agreement at an Appropriate Location.
- 3.6 We have the right, at our own expense, to enlist additional or substitute workers, sub-contractors or agents (**“Worker”**) in the performance of the Services or may, sub-contract all or part of the Services, provided that We provide details, whenever requested to do so, of the Worker ahead of the planned substitution and subject to the Client being reasonably satisfied that such additional Workers has the required skills, qualifications, resources and personnel to provide the Deliverables to the required standard.
- 3.7 Where We provide a Worker for all or part of Services pursuant to this clause 3.6, We shall be responsible for paying the Worker and shall ensure that any agreement between Us and any Worker shall contain obligations which correspond to the obligations of ICA under the terms of the Contract and We shall remain responsible for the acts or omissions of any such Worker.
- 3.8 We shall take all reasonable steps to avoid any unplanned changes of Worker assigned to the performance of the Services but if We are unable for any reason to perform the Services We shall inform You as soon as reasonably practicable on the first day of unavailability and in such case shall provide a substitute.
- 3.9 In the event We are unable to supply either the original personnel or acceptable substitutes or sub-contractors for a period of 3 months or more then You are entitled to terminate the Entire Agreement forthwith upon written notice without early termination charges as set out in clause 7.
- 3.10 ICA shall Use reasonable endeavours to observe all health and safety and security requirements that apply at any of the Clients Premises and that have been communicated to it provided that it shall not be liable under these Terms if, as a result of such observation, it is in breach of any of its obligations under these Terms or Services Agreement.

- 3.11 ICA shall, throughout the continuance of the Entire Agreement, Use reasonable endeavours to provide the Services and shall promptly obtain, maintain, and make available all necessary assets, equipment, premises, vehicles, personnel, capital and other facilities required for the provision of Services.
- 3.12 It is acknowledged and understood that some Services described in the Service Agreement may include Products and Services manufactured, developed, hosted, maintained, or otherwise provided by Third Party Suppliers.
- 3.13 It is acknowledged and accepted and Client waves all rights in relation to communication identifiers provided by Third Party Suppliers that are not the property of the Client or ICA. These
- 3.14 identifiers include, but are not limited to, IP Addresses and Telephony Numbers including special service numbers for inbound or outbound purposes.
- 3.15 It is acknowledged and agreed that You are bound by any Third Party Supplier Terms and Conditions of use and Sale, even in the case of these Services being charged by ICA.
- 3.16 Before providing the Services, You acknowledge and agree that ICA may carry out searches with credit reference agencies relating to the credit worthiness of the Client and/or Your owners, directors, officers.
- 3.17 Information or advice given orally or contained in Our publicity material, advertisements, and catalogues and in any correspondence between ICA and the Client before the start date of the Entire Agreement, is given gratuitously and without responsibility on the part of Us and shall not form part of the Service Agreement unless specifically agreed in writing and signed by a duly authorised officer of ICA.
- 3.18 All costs outlined in the Service Agreement are only valid for 20 days from its date of issue except where Third Party Suppliers increase costs or time limit promotional pricing during that period.
- 3.19 No variation of these Terms is permitted and shall exclude any other terms that You seek to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing unless expressly defined and agreed to by both Parties within the Services Agreement.

4. Service Changes or Interruptions

- 4.1 ICA retains the right to interrupt the Services without penalty for the following reasons:
- a) Interrupt the Services for operational reasons, technical reasons or because of an emergency;
 - b) Give You instructions that We believe are necessary for health or safety or to maintain the quality of the Services that We supply to You or to other Clients;
 - c) Change configuration or technical specification of the Services for Operational Reasons.
 - d) If in payment arrears beyond 7 days we have right to reduce, throttle or suspend service
- 4.2 We cannot guarantee and do not warrant that the Services will be free of interruptions or will be fault- free and We will not be liable for any loss or damages should the Services be interrupted from time to time.
- 4.3 You accept that there may also be degradations of the quality of the Service from time to time due to matters beyond our control and that We will not be liable for any loss or damages should the quality of the Service We provide be affected by such matters.
- 4.4 Client warrants that no computer system can ever be 100% secure from attack or compromise and that it has a duty of care to protect the Services from such.
- 4.5 ICA does not warrant that the Client's systems will be fully secure from third-party software or service vulnerabilities following Use of any of its Services.

5. Existing Installation Inspection

- 5.1 If We have not carried out the supply or installation of the equipment covered by the Services Agreement, then We shall be entitled to carry out a pre-support inspection and test of the existing installation. The inspection shall be subject to a supplementary charge payable by the Client prior to the commencement of Services for the Equipment inspected.
- 5.2 If in the opinion of ICA the existing installation is not of a standard that is reasonable and capable of being supported, We will provide You with a written estimate to restore the installation to such a standard.
- 5.3 If Client accepts Our estimate, We shall, without undue delay, endeavour to restore the existing installation to the required standard, provided that time is not of the essence in relation to the performance of this obligation.
- 5.4 If the Client rejects the estimate, then ICA may (without affecting its accrued rights) terminate the Entire Agreement with immediate effect. ICA will return any funds received in payment for support under this Entire Agreement within 60 days. The supplementary charge for the pre-support inspection remains payable in full and may be deducted from any funds returned to the Client under the terms of this clause.
- 5.5 Client accepts that no warranty in Existing Installations will be given by ICA and that it shall be liable for the establishment and maintenance of such warranties.

6. Equipment Delivery and Ownership

- 6.1 The Equipment shall be at the risk of the Client from the time of delivery or, if the Customer has requested to arrange for collection of the Equipment, from the date when ICA notifies the Client that the Equipment is ready for collection.
- 6.2 Client is required to inspect the Equipment upon delivery and to notify ICA of any defects or complaints within 7 days, or (where ICA is to install the Equipment as part of the Service) to notify ICA of any defects or complaints within 7 days of installation of the Equipment, failing which Client shall be deemed to have accepted the Equipment and shall be liable to pay the full price.
- 6.3 If Client fails to accept or take delivery of the Equipment within 14 days of ICA notifying the Customer that the Equipment is ready, then (except for Force Majeure or breach of Entire Agreement by ICA):
- a) Delivery shall be deemed to have been completed 3 days after ICA notified the Client that the Equipment was ready and;
 - b) May store the Equipment at the cost to the Client.
- 6.4 If 14 days after ICA has notified the Client that the Equipment was ready to be delivered the Customer has not taken delivery, then the We may sell the Equipment at the cost of the Customer and charge the Customer for any shortfall.
- 6.5 Notwithstanding that risk in the Equipment has passed to the Customer the Equipment shall remain the sole and absolute property of ICA, and title to and legal and equitable ownership of the Equipment shall not pass to the Client, until payment is received by Us of all monies due from You to Us under any Service Agreement or Entire Agreement.
- 6.6 Until ownership of the Equipment has passed to the Customer, the Customer shall:
- a) hold the Equipment on a fiduciary basis as the Companies bailee;
 - b) not sell, lease, charge, assign by way of security or otherwise deal in the Equipment, but may Use the Equipment in the ordinary course of its business;
 - c) keep the Equipment in good condition and store and Use it in all respects in accordance with the manufacturer's guidelines;

- d) not destroy, deface, remove or obscure any labels, badges, serial numbers or other means of identification of the Equipment and ensure that the Equipment is clearly identifiable as belonging to Us;
- e) insure the Equipment for its full replacement value with a reputable insurance company and shall upon request provide a copy of the insurance certificate to the Company.

6.7 ICA is unable to accept cancellations or returns of hardware and software items ordered on Your behalf, except where ICA's supplier allows ICA to return the same and You will indemnify ICA for any cancellation or returns penalty (if any) payable by ICA in relation to such return.

7. Commencement and Term

7.1 The Entire Agreement shall come into force at the Commencement Date set out in the Service Agreement or Order Schedules except:

- a) where You have failed to provide the appropriate information to Us to enable Us to start the Service
- b) where We have not accepted the Service Agreement and provided You written notice of such within 14 days of receiving Your signed Services Agreement.
- c) where Third Party Services are yet to be enabled in which case clause 3.4 shall apply.

7.2 In the event the Commencement Date is not specified on the Service Agreement or where there may be any conflict regarding Your Entire Agreement Commencement Date, then You agree the actual Commencement Date will be the date You signed the Service Agreement except for Third Party Services where clause 7.3 and 7.4 shall apply.

7.3 For the purposes of Third-Party Suppliers, the Minimum Term shall be from the point of service delivery for those Third-Party Services.

7.4 If multiple Third Party Services are contained within the Service Agreement the day the final Third Party Service is delivered or made live shall be Your Commencement Date.

7.5 The Minimum Term will be as specified on the Service Agreement, for each Service, or as otherwise agreed with You in writing.

7.6 In the event the Minimum Term is not on the Service Agreement or Order Schedules or Tariff then the Minimum Term will be 36 (Thirty-Six) months from Your Commencement Date.

7.7 Entire Agreement Renewal will automatically follow the Minimum Term on the anniversary of the original Commencement date and constitute a new Minimum Term of 12 months except for regulated services that do not allow such renewal.

7.8 Following the minimum term, regulated services as defined in 7.9, will be on a 90-day rollover contract.

7.9 For avoidance of doubt only telecommunication service delivery is regulated and only applicable to businesses that fall into the micro or sole trader category.

7.10 Cancellation of a regulated service does not remove your obligations for all other services provided within the Services Agreement and all other Minimum Terms and renewal will be upheld.

8. Changes to the Agreement

8.1 Any change to the Services requested by You will require confirmation by Service Agreement or agreed communication method.

8.2 It is Your responsibility to inform ICA of any additions or changes to the hardware and software not supplied by Us from the Commencement Date

- 8.3 No action will be taken by Us to carry out any change to Service until We have received Your written confirmation, or it is within the scope of the Entire Agreement. If We agree to a change, the Service Agreement will be accepted as changed.
- 8.4 When changes are made to the Service Agreement due to new starters or leavers adjustments to the billing will start from the 1st of the following month as defined in Clause 9.
- 8.5 You will inform Us within 14 (fourteen) days of any license or charge no longer required and this will be adjusted from the 1st of the following month following our acceptance with acknowledgment reflected in the invoice following the change.
- 8.6 We will not credit You for unused Third Party licenses or other costs where You haven't informed Us.
- 8.7 We may change the Terms or the Service Agreement (or any document comprising part of the Entire Agreement, including the tariff for any Service) at any time on giving You 30 (Thirty) days' notices.
- 8.8 We will notify You of any changes on Your monthly invoice or by other correspondence. You agree that if You continue to Use the Services following receipt of such notice You will be bound by the new/revised Terms.
- 8.9 No other variation in Entire Agreement will be agreed to by Us unless We confirm them in writing to You.

9. Charges, Payments and Records

- 9.1 It is the responsibility of the Client to ensure prompt payment of invoices to avoid delays in the Delivery of Equipment or Services.
- 9.2 Where any payment pursuant to the Entire Agreement is required to be made on a day on which is not a Business Day, it will be made on the previous Business Day.
- 9.3 Depending on the Services Agreement ICA will alter Your monthly invoice to reflect the number of Users, Devices, Licenses and other items required to deliver the Services.
- 9.4 You shall pay Us in accordance with the Services Agreement, for the Services provided by Us in accordance with these Terms.
- 9.5 You must pay the charges for the Services according to the applicable Tariff. This applies whether You or someone else Use the Services and whether the Services are Used with Your full knowledge and consent or otherwise.
- 9.6 ICA reserves the right to charge You for any additional work related to providing the Services of Equipment purchased by You without our prior approval that has a material effect on the Services
- 9.7 Charges shall be calculated in accordance with Our Tariff as defined in the Service Agreement or otherwise Published Tariff, for the agreed Minimum Term or Project Work as is set out in the Proposal, as amended from time to time in accordance with these Terms.
- 9.8 Some Services will be paid one month in advance while other Services are paid in arrears the following month. Your invoice will state the Service dates.
- 9.9 Where the Services Agreement provides for Equipment to be delivered by instalments, each separate instalment shall be invoiced and paid for in accordance with the provisions of the Agreement. Each instalment shall be a separate Agreement and no cancellation or termination of any one Agreement relating to an instalment shall entitle the Client to repudiate or cancel any other Agreement or instalment.
- 9.10 All sums payable by either Party pursuant to this Service Agreement are exclusive of any value added or other tax or other taxes on profit, for which that Party shall be additionally liable.
- 9.11 All payments required to be made pursuant to the Agreement shall be made within the date specified on the relevant invoice in British Pounds Sterling in cleared funds to Our nominated Bank

or as We may from time to time nominate by direct debit and these are the credit terms which will apply to this Agreement unless We have agreed otherwise in writing.

- 9.12 Payment for Services will be invoiced monthly and collected on or around the 15th of each calendar month across the minimum term of the Agreement and subsequent years by Direct Debit unless otherwise stated by Us.
- 9.13 The Client shall make all payments due under the Services Agreement in full without any deduction whether by way of set-off, withholding tax, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by Us to the Client.
- 9.14 Where We owe You any monies, You agree that We may offset this against any monies You may owe Us before We make any payment to You.
- 9.15 Time based daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days.
- 9.16 The quoted Day Rate shall be pro-rata of the time spent by Us performing the Services and shall be calculated in 10-minute increments.
- 9.17 Travel time to and from Client Premises or other locations that are mutually agreed constitutes part of the Day.
- 9.18 We shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the Business Day.
- 9.19 We shall be entitled to charge You for any expenses/disbursements reasonably incurred by the individuals whom We engage in connection with the Services including travelling expenses, hotel costs, subsistence, and any associated expenses, and for the cost of services provided by third parties and required by Us for the performance of the Services, and for the cost of any materials unless stated in the Service Agreement as being included in the contract.
- 9.20 Where You take a product or service on a trial basis for a reduced or zero charge for a fixed period, unless otherwise advised to You in writing, You need to give Us notice in writing if You wish to cancel the Service at the end of the trial. If You fail to give Us notice, then We will automatically invoice You for the Service at the end of the trial for the remainder of the agreed Entire Agreement term.
- 9.21 To maintain investment You acknowledge, accept, and authorize that We will apply price increases of 3.9% above CPI inflation in the proceeding 12 months as defined in the published rate by the Bank of England in February of each calendar year. These increases will be applied to your invoices every April and will not be considered a change of the Entire Agreement.
- 9.22 We reserve the right to review the Entire Agreement on an annual basis or in the case of IT Services within 6 months of Commencement or in the case of clause 10.2 and in addition to Clause 9.23 increase the amount charged with 30 day's notice.
- 9.23 You authorise licensing, rental or subscription price increases that may be increased at any time by Third Party Suppliers with 30 days' notice of intention.
- 9.24 Should any Third Party Supplier Service be transferred or terminated you authorise all fee's incurred for such change.
- 9.25 Not precluding Clauses 9.1 We may ask You for a payment in advance:
- a) We may ask for a deposit at any time, as security for payment of Your invoices if it is reasonable for Us to do so, which You shall pay in accordance with this clause 9. Our procedures for deposits will be explained to You at the relevant time.
 - b) Before payment would normally be due, which You shall pay in accordance with clause 9.12. This advance payment will not be more than our best estimate of Your following month's invoice. Should Your advance payment exceed Your actual invoice then any surplus will be credited to Your account to be offset against subsequent invoices, should there be no further invoices and Your account is not in debit then We will refund to You any surplus after deducting any cancellation or termination charges.
 - c) We will ask for a deposit on Project Work which will be paid before commencement of the project in accordance with clause 9.27.

- 9.26 Project Work Proposals are estimates and exclude sundry items or other costs that may be incurred as notified to You during the project.
- 9.27 For any large Project Work either conducted onsite or remotely outside of the scope of the Services Agreement, an additional Services Agreement or other authorised method will be provided and require an authorised signatory to complete and return to Us.
- 9.28 For Project work that includes Equipment our standard credit terms are fifty percent (50%) deposit of the estimated cost paid within the time specified on the invoice sent in advance of commencement of the project with the balance of project costs and sundry items in relation to the Project being due on completion of the Deliverables.
- 9.29 If the Project Work is to be paid by standing order or direct debit the first payment will be collected on the 15th of the month, with subsequent payments following the Deliverable on or about the 15th of each calendar month thereafter.
- 9.30 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Us any sum due under this agreement on the due date We reserve the right to charge interest at the rate for the time being applicable under the Late Payment of Commercial Debts (Interest) Act 1998:
- a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
 - b) Interest under this clause will accrue from the Due Date at 3% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is at or below 0%; and
 - c) We may suspend part or all the Entire Agreement until payment has been made in full.
- 9.31 Each Party shall:
- a) keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable by it pursuant to the Entire Agreement to be accurately calculated;
 - b) at the reasonable request of the other Party, allow the other Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them;
- 9.32 In the event of You placing an order and make a payment online for that order and We accept Your order, We will confirm Your order and receipt of payment by email at which point Your Entire Agreement will be binding. You may also get a payment confirmation from the third-party payment processing company. Where We do not accept Your order, We reserve the right to return a payment to You.
- 9.33 You should contact Us immediately if You have any concerns regarding the order or payment. Where You fail to advise Us of any issues regarding Your online payment, We are not liable for any consequences of any such payment but will make reasonable endeavours to rectify any of Your concerns.
- 9.34 Although We try to maintain our billing systems to be as accurate as possible, We reserve the right to include any licensing or Service charges incurred but not invoiced up to a period of 12 months after the service or license has been supplied.

10. Supplemental Charges

- 10.1 If Client reports a fault in a Service and We find either that there is not or that You, someone at Your Premises or a third party (including, without limitation, another network operator, IT Services Company or communications supplier) has caused the fault or the interruption in service, We may charge You for any work We have done to try to find the fault or to repair it.
- 10.2 Client acknowledges the Use of a Fair Usage Limit calculated as being more than 50% above the average number of tickets raised on a pro-rata basis across our clients in any given 30 day period.
- 10.3 If client exceeds these limits within any 3 (three) month period ICA retain the right to increase charges as determined in Clause 9
- 10.4 To ensure that faults can be resolved without delay You preauthorise and agree to pay Us costs that We may incur on material including but not limited to equipment or software to resolve hardware or software failures. This preauthorisation and agreement to pay will be to the value specified in Your Services Agreement. If no figure is entered or instruction explicitly stated, We will assume that We are authorised to spend, and You agree to pay up to £500 +VAT.
- 10.5 Pre-authorised items include but are not limited to;
- a) Server and storage Hardware (Hard drives, RAID controllers, batteries, motherboards etc);
 - b) Network switches;
 - c) Routers;
 - d) UPS batteries;
 - e) Handsets or other telephony equipment
- 10.6 It is the responsibility of the Client, at its own expense:
- a) During any fault investigations, ICA may require You to carry out tests or follow instructions from Us to allow Us to follow our standard procedures and conclude our investigations.
 - b) to obtain and make available to ICA or its agents clear and unobstructed access to the Premises to enable the installation or service of the Equipment to proceed from any agreed date;
 - c) make available mains electric power supply, conduits, sockets and such like, together with any peripheral equipment not included in the Equipment or Services, to enable the installation or Service of the Equipment to proceed from any agreed date;
 - d) Ensure all the Clients Equipment is in good working order and suitable for the purposes for which it is Used in relation to the Works and conforms to all relevant United Kingdom standards or requirements.
 - e) obtain all licences, permits, way leaves, easements, and other third-party consents as are necessary for the installation or Service of the Equipment or its connection to the relevant network, by the agreed date for the commencement of the Services from the agreed date;
- 10.7 Further to Clause 3.12 Client recognises that in some cases, ICA provide services on a referral or reseller basis that are wholly outside of Our control. These may include but are not limited:
- 10.8
- a) The ability to make or receive a Telephone Call including a signal, message or communication which is silent, spoken or visual (Telephone Service);
 - b) The provision of a Line or Lines for a rental charge (line rental service);
 - c) The provision of Broadband internet access (Broadband service);
 - d) The provision of Inbound telephony services (Inbound service);
 - e) The provision of Mobile services (Mobile service);
 - f) The provision of IP telephony services (IP Services);

- g) The Provision of SaaS products and Services (IT services) including but not limited to Anti-Virus Software; Threat Detection Software; Cloud Based Firewall Services; Hosting Software including but not limited to Microsoft Office 365;
- h) Third Party Applications;
- i) Other Services which We may offer for sale from time to time;
- j) Wireless Devices and Services;
- k) The provision of equipment that You will wholly own
- l) Other Services which We may offer for sale from time to time.

11. Terminating the Agreement

- 11.1 Either Party may forthwith terminate the Services Agreement by giving forty-five (45) days written notice to the other Party if:
- a) We believe that the Service is being Used in a way forbidden by Us under these Terms or by Law or Regulation. This applies even if You do not know that the Service(s) are being Used in such a way;
 - b) We consider the continuance of Our relationship with You would prejudice Our reputation or goodwill;
 - c) We believe that misleading or prejudicial information has been withheld or where You have provided information to Us that We believe is misleading or prejudicial or where You fail to make legal or regulatory declarations and You refuse to do such within 30 days of notification by Us
 - d) Any sum owing to Us by You under any of the provisions of the Entire Agreement is not paid within 30 (Thirty) days of the due date for payment;
 - e) that other Party commits any other breach of any of the provisions of these Terms or the Service Agreement and, if the breach is capable of remedy, fails to remedy it within Thirty (30) days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - f) an encumbrancer takes possession, or where that other Party is a Client, a receiver is appointed, of any of the property or assets of that other Party;
 - g) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - h) that other Party, being an individual or Client, has a bankruptcy order made against it or, being a Client, goes into liquidation (except for the purposes of amalgamation or re-construction You effectively agree to be bound by or assume the obligations imposed on the Client under the Services Agreement);
 - i) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other Party;
 - j) that other Party ceases, or threatens to cease, to carry on business on all or a substantial part of its business;
 - k) the other Party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
 - l) Client exceeds Fair Usage Limit more than once within a (3) three-month period;
 - m) Control of the Client passes to another Party.
- 11.2 Where a Service from a Third-Party Supplier has a notice period of greater than forty five(45) days then this notice must be provided on that Service by the Client.
- 11.3 For the purposes of sub-Clause 11.1 (e), a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

- 11.4 If Client wishes to terminate the Service Agreement in respect of a Service prior to the end of the Minimum Term other than because We have materially altered the Terms of the Entire Agreement except for clause 9.23, 9.24 and 9.27 or You have claim under clause 3.9 or We are in breach of clause 11.1 (e) or you have a regulated service as imagined in clause 7.11, You must give Us at least forty-five (45) days' notice in writing and We will levy a cancellation charge calculated in accordance with the following:
- a) For each Service for which a monthly charge is payable including but not limited to professional services, rental and subscription charges - number of months remaining of Minimum or Entire Agreement Term for that Service multiplied by the monthly charge of each service; and/or
 - b) Average Spend – number of months remaining on Minimum Term multiplied by the monthly Average Spend based on Your last three months invoices; and/or
 - c) Pro-rata or full repayment of any cost or other contribution to upfront or ongoing costs paid by ICA and in accordance with the terms of the subsidised installation, and/or
 - d) The appropriate notice period charge for each Service, and/or
 - e) Repayment of any discount or other benefit You may have received which was based on a minimum Entire Agreement term commitment, and/or
 - f) Any applicable cease charges as may be detailed in the tariff.
- 11.5 Should You fail to pay the early termination cancellation charges within fourteen (14) days of the date of invoice We reserve the right to suspend Your services.
- 11.6 If You have paid any charges in respect of a Service for a period after this Agreement has ended in respect of that Service, We will either repay it or off set towards any money You owe Us.
- 11.7 If Written notice is required, it shall be delivered to by hand or sent by email as follows:
- a) to Us at the address or email address shown on the Service Agreement or on Your last invoice, or at any other address or email address We give You.
 - b) to You at the address You have asked Us to send invoices to or to the email
- 11.8 Notices shall be deemed to have been duly given:
- a) when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - b) when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or
 - c) in each case addressed to the most recent address or e-mail address, notified to the other Party.

12. Clauses following Termination

- 12.1 Following termination of the Service Agreement:
- a. any sum owing for any provisions under these Terms and/or Service Agreement shall be immediately payable;
 - b. Where We owe You any monies, You agree that We may offset this against any monies You may owe Us before We make any payment to You.
 - c. Termination charges will remain in effect and will be payable by You. This includes but is not limited to costs to terminate or transfer any service as defined by a Third Party Supplier.
 - d. You shall return all ICA Materials. If You fail to do so, then We may enter Your Premises and take possession of the Equipment. Until the Equipment has been returned or repossessed, You shall be solely responsible for its safe keeping and clearly mark it as belonging to Us;
 - e. Any rights or obligations to which any of the Parties to this Agreement may be entitled or be subject before its termination shall remain in full force and effect;

- 12.2 The rights to terminate the Entire Agreement given by Clause 11 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 12.3 Termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination.
- 12.4 Subject as provided in this Clause 12 and except in respect of any accrued rights and those defined in Section Two neither Party shall be under any further obligation to the other.
- 12.5 Each Party shall except to the extent anticipated in Section Two forthwith cease to Use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other Party any documents in its possession or control which contain or record any Confidential Information as defined in Section Two.

13. Transition following Termination

- 13.1 ICA shall Use their best endeavours to assist any successor organisation appointed by the Client to provide the services described in the Service Agreement.
- 13.2 The Customer may, at any time before expiry or termination of all or any part of this agreement request ICA to provide Transition Services or otherwise to offer reasonable assistance in transitioning the Services to a Replacement Supplier by providing the Transition Services.
- 13.3 ICA shall, in consideration of a reasonable fee to be agreed in advance, provide such Transition Services for a maximum period of 3 (three) months, or until expiry or termination of all or any part of the Service Agreement for any reason in accordance with Clause 11 whichever is later.

14. Non-Solicitation

- 14.1 Except in respect of any transfer of employees of ICA to You pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), the Client shall not, without the prior

written consent of ICA, at any time from the Commencement Date to the expiry of 18 months after the Termination of the Service Agreement, solicit or entice away from ICA or employ or attempt to employs in any form or engages any person who is, or has been, engaged as an employee, of ICA in the provision of the Service Agreement.

- 14.2 Any consent given by ICA in accordance with clause 14.1 shall be subject to the Client paying to Us a sum equivalent to 40% of the then current annual remuneration of ICAs' employee, consultant or sub-contractor or, if higher, 40% of the annual remuneration to be paid by You for that employee, consultant or sub-contractor.
- 14.3 If consent has not been granted and the Client entices away or employs in any form, either:
 - a) A current employee of ICA while the client is under contract or;
 - b) A former employee who has been employed within the previous 12-month period by ICA or;
 - c) Client has terminated any contract with ICA within the previous 12 months before employing a current or former as described in this clause; then:
- 14.4 Client shall be subject paying to Us a sum equivalent to 50% of the then current annual remuneration of ICAs' employee, consultant or sub-contractor or, if higher, 50% of the annual remuneration to be paid by You for that employee, consultant or sub-contractor.
- 14.5 In respect to 14.3 should the Client employ an employee or former employee as described and this results in the early termination of contract the client shall additionally pay the termination costs as set out in clause 11.4 as well as the above charges.

- 14.6 You agree not to bring any claim in connection with the Services against any of ICA's employees personally.

15. Client's Obligations

- 15.1 The Client shall allow ICA and its personnel access at all reasonable times to the Premises for the purpose of providing the Services.
- 15.2 If it is not included in the Service Agreement it is Your responsibility to ensure that backup of all data is undertaken securely and regularly,
- 15.3 This clause is left blank purposefully.
- 15.4 It is the responsibility of the Client, at its own expense:
- a) ensure that any information provided by You to ICA in connection with the creation of the Proposal (as varied in accordance with the Entire Agreement) and any information set out in the Proposal is and remains, throughout the course of the provision of the Services, complete and accurate.
 - b) co-operate with ICA in all matters relating to the Services;
 - c) provide ICA or its agents all necessary access to Client Premises and all reasonable information and co-operation to enable the Service to proceed from the Commencement Date;
 - d) provide ICA with such operational and or policy advice in connection with the performance of the Services as ICA may from time to time reasonably require and provide ICA with all necessary literature, books, office manuals and other material which Client requires to be observed;
 - e) obtain and maintain all necessary licences, permissions and consents and comply with all relevant legislation as required to enable ICA to provide the Service, including in relation to the Materials and the Use of the Clients Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
 - f) keep, maintain and insure (if applicable) Our Materials in accordance with Our instructions from time to time and not dispose of or Use the Materials other than in accordance with Our written instructions or authorisation;
 - g) retain any license keys, CDs or other media for devices or third-party software not purchased through ICA. Should they be mislaid or fail to load correctly You will be responsible for the cost of replacement licenses or media;
 - h) ensure You have adequate resilience in place to protect against any loss of data, service or connectivity if not supplied by ICA.
 - i) ensure that suitable support contracts are in place for systems provided by third parties if not included in the Services Agreement. Such systems include, but are not limited to:
 - I. Line of Business systems (ERP, CRM, manufacturing, production)
 - II. Telecommunication systems (if not supplied by Us)
 - III. Security systems (CCTV, alarms, door control)
 - IV. Time-keeping systems
- 15.5 It is Clients responsibility to ensure that signing a Service Agreement with ICA does not breach any existing contractual obligations You may have with any other suppliers and You should give any other suppliers notice as may be required by them. ICA is not responsible or liable for any costs, financial losses or disputes that may arise from any such breach of contract or Your failure to give the correct notice.
- 15.6 The Client and ICA shall each Use their best and reasonable endeavours to keep each other informed of any special requirements (including statutes and codes of good practice) applicable

to the rendering of the Services. To the extent necessary and appropriate ICA shall promptly take steps to comply with such special requirements.

- 15.7 It is Clients responsibility to keep private any Usernames, passwords or pin codes that We may provide, or You hold in conjunction with the Use of any of Our Services. You warrant liability for all charges associated with the Use of such Usernames, passwords and pin codes to access Our or

Third Party Services or Software unless You advise Us that the security of any of the User names, passwords or pin codes may have been compromised and We confirm back to You that We have disabled the access.

- 15.8 Should You fail to notify Us of any such compromise in security in Clause 15.7 then You will remain liable for all charges incurred in accessing the Services. Where We disable any access following a compromise in security, We shall provide You with new Usernames, passwords or pin codes as appropriate which are subject to the terms of this clause.
- 15.9 The Client shall ensure prompt payment of any deposits or fees required for Service.
- 15.10 In the event the Client declines recommendations made to it by ICA that may include, but is not limited remediation work, upgrades and additional security software, the Client will indemnify ICA as outlined in clause 22 should this result in loss.
- 15.11 The Client will not allow any changes or modifications to Equipment to be made by any party other than those changes or modifications authorised by and notified to Us. If such changes or modifications are carried out without such authorisation and appropriate notification, We reserves the right to review the Services Agreement and make adjustments accordingly.
- 15.12 If ICA's performance of any of its obligations under the Entire Agreement is prevented or delayed by any act or omission by You, Your agents, subcontractors, consultants or employees or failure by You Your agents, subcontractors, consultants or employees to perform any relevant obligation ("**Your Default**"):

- a) without limiting or affecting any other right or remedy available to it, ICA shall have the right to suspend performance of the Services until You remedy Your Default, and to rely on Your Default to relieve it from the performance of any of its obligations in each case to the extent Your Default prevents or delays ICA's performance of any of its obligations;
- b) ICA shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from ICA's failure or delay to perform any of its obligations as set out in this clause 15;
- c) ICA shall be entitled to payment of the Charges despite any such prevention or delay;
- d) You shall reimburse ICA on written demand for any costs or losses sustained or incurred by ICA arising directly or indirectly from Your Default.

16. Misuse of Services

- 16.1 Client must not misuse the Services and indemnifies ICA from all claims resulting in sums We are obliged to pay and costs We incur resulting from Client misusing the Service.
- 16.2 Misuse of the Service is defined as:

- a) to make abusive, defamatory, obscene, offensive, indecent, menacing, disruptive, nuisance or hoax communications using Services provided by ICA or its Third-Party Suppliers or make communications in breach of privacy or any other rights;
- b) to send, knowingly receive, upload, display, download, Use or re-Use material, which is abusive, defamatory, obscene, offensive, indecent or menacing or in breach of copyright, privacy or any other rights;

- c) to send and receive data in such a way or in such amount so as to adversely affect the network (or any part of it) which underpins any Service or to adversely affect our other customers or customers of our suppliers;
 - d) for the carrying out of fraud, any unlawful activity or a criminal offence or in a way which does not comply with the terms of any legislation;
 - e) in a way that does not comply with any instructions given by Us to You;
 - f) to obtain access, through whatever means, to restricted areas of the underlying network; or
- g) in a way which (in our reasonable opinion) brings our name into disrepute, or which places Us in breach of our legal or regulatory obligations.

17. Third Party Equipment and Services

- 17.1 Further to Clause 3.12 Client recognises that in some cases, ICA provide Equipment and Services on a referral or reseller basis that are wholly outside of Our control.
- 17.2 These may include (but are not limited to) Equipment as defined in clause 10.6, including but not limited to software and Web based platforms.
- 17.3 ICA and Client may mutually agree to have Services in this Clause 17 sourced and invoiced by ICA as part of the Services.
- 17.4 The Service Agreement will state these Third-Party Suppliers. In the event these services are not clearly stated it will be granted that all services described in clause 10.6 will be classed as Third-Party Suppliers.
- 17.5 It is acknowledged and agreed that ICA has a duty of care in offering these services and will undertake to liaise at all times with the Third Party Supplier on the Clients behalf.
- 17.6 It is acknowledged and agreed that Client may Use Third Party Suppliers Equipment that is not within the scope of the Entire Agreement, even where We rely on such Equipment as part of Our Services.
- 17.7 In the case of clause 17.6 Client will ensure that the Equipment is maintained to the standard required to carry out our Services. This may include having additional warranties and Services from third parties.

18. Call monitoring

- 18.1 We may occasionally monitor, and record calls made to or by Us relating to customer services and telemarketing calls made by Us, for the purpose of training and improving customer care services, including complaint handling.

19. Data Protection

- 19.1 The Parties will comply with all applicable requirements of Data Protection Legislation.
- 19.2 For the purposes of Data Protection Legislation Client shall be the Controller and ICA Processor.
- 19.3 On signing of the Proposal and entering into the Entire Agreement Client is acknowledged as providing written instruction to ICA to process Personal Data on the basis of Section Two of these Terms unless Client presents its own data processing agreement ("DPA").
- 19.4 If the Client produces a separate DPA then this will form part of the Entire Agreement on written acceptance by ICA.
- 19.5 The substantive terms of these Terms including this clause is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the Data Protection Legislation.
- 19.6 The Parties acknowledge that data subjects have enforceable rights and effective legal remedies with regard to the data processed within the Services Agreement.

- 19.7 The Parties acknowledge that they may be subject to investigative and corrective powers of supervisory authorities if they fail to meet its obligations which may lead to fines, penalties and other actions.
- 19.8 In addition to the terms of this Clause 19, the terms of the Privacy Notice published and updated from time to time by ICA shall also apply.

20. Confidentiality

- 20.1 Each Party undertakes that, except as provided within this Clause 20 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and for 2 years after its termination:
- a) keep confidential all Confidential Information;
 - b) not disclose any Confidential Information to any other person;
 - c) not Use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and of the Service Agreement;
 - d) not make any copies of record in any way, except as part of the Services, or part with possession of any Confidential Information; and
 - e) ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of this Clause 14.
- 20.2 Either Party may disclose any Confidential Information to:
- a) any employees, officers, representatives, contractors, subcontractors, Third Party Suppliers or advisers who need to know such information for the purposes of carrying out the party's obligations under the Entire Agreement;
 - b) any governmental or other authority or regulatory body; or
 - c) to such extent only as is necessary for the purposes contemplated by these Terms and Services Agreement, or as required by law, and in each case subject to that Party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in this clause 20.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause, to keep the Confidential Information confidential and to Use it only for the purposes for which the disclosure is made; and
 - d) Use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Commencement Date, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.
- 20.3 Each party shall ensure that its employees, officers, representatives, contractors, subcontractors, Third Party Suppliers, or advisers to whom it discloses the other party's confidential information comply with this clause 20.

21. Intellectual property rights and Copyright

- 21.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by You or a Third-Party Supplier) shall be owned by ICA.
- 21.2 ICA grants to You, or shall procure the direct grant to You of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by You or Third-Party Supplier) for the purpose of receiving and Using the Services in Your business.
- 21.3 You are not permitted to make a copy of the Deliverables available to third parties for any other purpose without ICA's written permission and where no permission is obtained You will indemnify
- 21.4 ICA in full for all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by ICA arising out of or in connection with any Use of the Services and/or the Deliverables for non-permitted purposes.
- 21.5 You shall not sub-license, assign or otherwise transfer the rights granted in clause 21.3.
- 21.6 You grant ICA a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by You to ICA for the term of the Contract for the purpose of providing the Services to You.
- 21.7 The operating manuals and other documentation provided by ICA under the Entire Agreement is the copyright of ICA or the Third Party Supplier, and the Client shall take all such steps as shall be necessary to protect such copyright and any confidential information in such documentation.
- 21.8 This document is reproduced under License from Fifth Square Ltd. No part of this publication may be reproduced, transcribed, adapted or Used for commercial purposes without the express consent of Fifth Square Ltd.

22. Limitations of Liability

- 22.1 Nothing in this clause 22 shall limit Your payment obligations under the Entire Agreement.
- 22.2 ICA shall maintain in force during the period of the Entire Agreement adequate and appropriate insurance cover with reputable insurers acceptable to the Client in respect.
- 22.3 Throughout the life of the Entire Agreement ICA will purchase and maintain professional indemnity insurance at a minimum level of cover of £1,000,000
- 22.4 ICA shall promptly provide to the Customer any evidence, documents or materials reasonably requested by the Customer in relation to such insurance cover.
- 22.5 References to liability in this clause 22 include every kind of liability arising under or in connection with the Entire Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 22.6 The limits and exclusions in this clause 20 reflect the insurance cover We have been able to arrange, and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 22.7 Nothing in these Terms or the Services Agreement limits any liability which cannot legally be limited, including but not limited to liability for:
 - a) death or personal injury caused by negligence;
 - b) fraud or fraudulent misrepresentation;
 - c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
 - d) Fines or Judgements imposed by a Data Protection Authority or Court for breach of Data Protection Legislation.
- 22.8 Except as expressly set out in these Terms or within the Service Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade Usage or otherwise are hereby excluded to the maximum extent permitted by law.

- 22.9 ICA agree to indemnify Client in respect of losses, including third party claims against Client, arising as a result of the failure of ICA to perform properly their obligations under the Entire Agreement or acts of negligence on their part or the part of their employees.
- 22.10 Subject to above clause 22.8 and with exception to clause 22.7, Our total liability to the Client in respect of all breaches of duty occurring within any Entire Agreement year shall not exceed the cap.
- 22.11 In clause 22.10 above the meaning will be:
- a) **"Cap"**. The cap is the greater of 80% of the total charges in the Entire Agreement year in which the breaches occurred.
 - b) **"Entire Agreement year"**. An Entire Agreement year means a 12-month period commencing with the date of the Service Agreement or any Anniversary of it;
 - c) **"Total charges"**. The total charges mean all sums paid by the Client and all sums payable under the Services Agreement in respect of Services actually supplied by Us, whether or not invoiced to the Client excluding any Third Party charges invoiced by Us on Behalf of the Third Party; and
 - d) **"Total liability"** Our total liability includes liability in Entire Agreement, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement, warrants to the Client that the Services will be provided Using reasonable skill and care.
- 22.12 The Cap on ICA's liabilities shall be reduced by:
- a) payment of an uncapped liability;
 - b) amounts awarded by a court or arbitrator, Using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 22.13 Any act or omission of any Third-Party Supplier, subsidiary, contractor, or agent involved in the performance of the Entire Agreement shall be considered in relation to the Entire Agreement as an act or omission of that party and You shall indemnify ICA for such acts or omissions.
- 22.14 ICA will not be liable for non-performance, misrepresentation (intentional or unintentional) or any act or omission of a Third-Party Supplier covered in Clause 17.
- 22.15 Client shall maintain in force during the period of the Service Agreement adequate and appropriate insurance cover, including cyber insurance, with reputable insurers acceptable to Us in respect.
- 22.16 ICA shall not be liable for any loss claim, penalty, surcharge, obligation, or damage arising from the breach by the Client of its obligations including but not limited to supplying ICA with adequate, appropriate or correct information.
- 22.17 ICA shall not be liable for any loss, claim, penalty, surcharge or obligation which arises as a direct result of You failing to act on ICA's advice (whether oral or in writing)
- 22.18 ICA shall not be liable for any loss, claim, penalty, surcharge or obligation which arises as a direct result of You failing to respond promptly to ICA's communications or those of any relevant authority (including but not limited to ICO or any other regulatory authority)
- 22.19 ICA shall not be liable for any loss, claim, penalty, surcharge or obligation which arises In the event of data loss or non-recoverability of client data unless We are at fault due to neglect.
- 22.20 Our Services are provided on the basis of its current knowledge and understanding of best industry practice and know-how and do not imply or warrant that We are aware of all threats.
- 22.21 Subject to clause 22.1 and clause 22.7 You shall indemnify Us against all liabilities, costs, expenses, damages and losses suffered or incurred in connection with the Services or any breach of this Agreement.
- 22.22 The types of wholly excluded loss referenced in this Clause 22 are as follows:
- a) Loss of profits.
 - b) Loss of sales or business.
 - c) Loss of agreements or Entire Agreements.
 - d) Loss of anticipated savings including interest

- e) Loss of Use or corruption of software, data or information.
- f) Loss of or damage to goodwill, reputation.
- g) Indirect or consequential loss.
- h) Penalties and Fines
- i) Reasonable professional costs and expenses

- 22.23 Unless You notify ICA that You intend to make a claim in respect of an event within the notice period, ICA shall have no liability for that event. The notice period for an event shall start on the day on which You became, or ought reasonably to have become, aware of the Your having grounds to make a claim in respect of the event and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 22.24 This clause22 shall survive termination of the Entire Agreement.

23. Force Majeure

- 23.1 "Force Majeure Event" means any circumstance not within a Party's reasonable control including, without limitation:
- a. acts of God, flood, drought, earthquake or other natural disaster;
 - b. epidemic or pandemic;
 - c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - d. nuclear, chemical or biological contamination or sonic boom;
 - e. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition [or failing to grant a necessary licence or consent];
 - f. collapse of buildings, fire, explosion or accident;
 - g. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
 - h. non-performance by Third Party Supplies as described in Clause 17;
 - i. Non-performance of subcontractors (other than by companies in the same group as the party seeking to rely on this clause);
 - j. interruption or failure of utility service.
 - k. unanticipated staff shortage combined with increased work volume.
- 23.2 If a party is prevented, hindered, or delayed in or from performing any of its obligations under Entire Agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of the Entire Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 23.3 The corresponding obligations of the other party will be suspended, and it's time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 23.4 The Affected Party shall:
- a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
 - b) Use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 23.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 months the party not affected by the Force

Majeure Event may terminate the Entire Agreement by giving 1 month written notice to the Affected Party.

24. Nature of the Services Agreement

- 24.1 Each Party shall be entitled to perform any of the obligations undertaken by it and to exercise any rights granted to it under the Agreement through any other member of its group, provided that any act or omission of that other member shall, for all the purposes of these Terms, be deemed to be the act or omission of the Party in question.
- 24.2 Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
- 24.3 ICA may at any time assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all its rights under the Entire Agreement.
- 24.4 These Terms form part the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 24.5 Each Party acknowledges that, in entering into the Entire Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in these Terms and the Service Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 24.6 No failure or delay by ICA in exercising any of its rights under the Entire Agreement shall be deemed to be a waiver of that right, and no waiver by ICA of a breach of any provision of the Entire Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 24.7 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 24.8 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 24.9 Each party acknowledges that in entering into the Entire 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 Entire Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Entire Agreement.
- 24.10 Nothing in this clause 24 shall limit or exclude any liability for fraud.

25. Quality Control and Dispute

- 25.1 If at any time you would like to discuss how you believe our service could be improved or if you are dissatisfied with the service you are receiving please let us know by contacting us at support@ICA.co.uk
- 25.2 We take all complaints seriously and will investigate any complaints carefully and promptly in line with our Complaints Handling Procedure that we can provide you on request
- 25.3 If there is a dispute as to these Terms and/or Service Agreement the matter will be handled as specified in this clause 25.
- 25.4 The rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.
- 25.5 If there is an inconsistency between any of the provisions of these Terms and the Service Agreement, the provisions of the Service Agreement shall prevail.
- 25.6 If any provision or part-provision of the Entire Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Entire Agreement.

- 25.7 If any provision or part-provision of this agreement is deemed deleted under Clause 25.6 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 25.8 In the event of any dispute of whatever nature arising out of any aspect of these Terms and Service Agreement, the Parties hereby agree to submit the dispute to mediation, expert determination or such other recognised alternative dispute resolution process as they shall agree is appropriate.
- 25.9 The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the parties.
- 25.10 Within 14 days of one party informing the other that they wish a dispute to be resolved in this manner, the parties shall each provide the name of one suitable third party neutral to conduct or determine the dispute resolution process as appropriate in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.
- 25.11 If within a further 7 days, the parties cannot select from these a mutually acceptable neutral then the decision shall be referred to President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 25.12 Any such process shall be conducted in accordance with the rules, guidance and code of conduct of the Academy of Experts. The parties agree to be bound by the outcome of the process determined upon under this clause.
- 25.13 Nothing in this Clause 25 shall prohibit either party or its affiliates from applying to a court for interim injunctive relief.

26. Law and Jurisdiction

- 26.1 The Entire Agreement shall be governed by the laws of England and Wales.
- 26.2 In the event any dispute is not settled under Clause 25 between the Parties relating to these Terms and the Service Agreement it shall fall within the jurisdiction of the courts of England and Wales.

27. Counterparts

- 27.1 The Service Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Entire Agreement.
- 27.2 Transmission of the executed signature page of a counterpart of the Service Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of the Service Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 27.3 No counterpart shall be effective until each party has executed at least one counterpart.

28. Relationship of the Parties

- 28.1 Nothing in these Terms or Service Agreement shall constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided, shall it constitute, or be deemed to constitute an agency of any other Party for any purpose.
- 28.2 Subject to any express provisions to the contrary in these Terms and Service Agreement, ICA shall have no right or authority to and shall not do any act, enter into any Entire Agreement, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of Client or bind Client in any way.

29. Costs

- 29.1 Subject to any provisions to the contrary each Party to these Terms and Service Agreement shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Entire Agreement.

Section Two – Data Processing Agreement (“DPA”)

1. Data Protection as Controller

- 1.1 The Parties acknowledge that for the purposes of Contractual Obligation ICA will be Controller of Personal Data related to the Clients Employees, Agents and others that We may need to contact in order to carry out the Services and duties under the Entire Agreement.
- 1.2 The Parties acknowledge that We may from time to time rely on Legitimate Interest to communicate with Data Subjects of the Client if such communication falls outside the scope of Clause 1.1
- 1.3 The Personal Data elements held by ICA for the purposes of the fulfilment of Entire Agreement shall include but not be limited to:
 - a) Full Name;
 - b) Email Address;
 - c) Telephone Numbers including mobiles that may not belong to Client;
 - d) Work Address;
 - e) Emails and other correspondence between parties including tickets
- 1.4 If additional Personal Data Elements are required to fulfil our contractual obligations, We will inform You.
- 1.5 Client accepts that it has read and understood Our Privacy Policy for the Purposes of this DPA and those contained in the Services Agreement.

2. Data Protection as Processor

- 2.1 The Parties acknowledge that for the purposes of Services fulfilment and the Data Protection Legislation, Client is the Controller and has selected ICA as a Processor under the legal basis of Fulfilment of Contract as outlined in the Services Agreement.
- 2.2 The Parties acknowledge that this Section forms part of the Terms and will act as a DPA.
- 2.3 The Personal Data Elements that will be processed will be:
 - a) Names;
 - b) Addresses;
 - c) Email addresses;
 - d) Telephone numbers;
 - e) Bank details;
 - f) Financial information;
 - g) Special Categories of personal data for example health records of Employees and Equal Opportunities Monitoring;
 - h) Confidential Data

- 2.4 The categories of data subject whose data will be processed in accordance with these Terms subject to amendment to the Service Agreement will include:
- a) Employees;
 - b) Former employees;
 - c) Suppliers & processors and their employees;
 - d) Clients;
 - e) Former Clients;
 - f) Potential Clients who may have provided the personal data to Client directly or through third parties and will have been provided with appropriate information where this is required.
- 2.5 Without prejudice to the generality of this Section Two, Client warrants it has all necessary appropriate legal basis including but not limited to consents and notices in place to enable lawful processing of the personal data with ICA for the duration and purposes of the Entire Agreement and that data processed is accurate.
- 2.6 Client will undertake a suitable Retention Policy and Procedure and ensure that it instructs ICA either on the Services Agreement or in writing as to any roles and responsibilities of ICA in upholding these Policies and Procedures.
- 2.7 Client requires and acknowledges that ICA will not enact any Retention Policy on behalf of Client unless instructed to in the Services Agreement.
- 2.8 Client warrants it has provided appropriate safeguards in relation to the transfer of personal data to ICA.
- 2.9 By signing the Service Agreement Client is acknowledged as providing written instruction to ICA to process Personal Data on the basis of this Clause2.
- 2.10 The nature and purpose of the Processing by ICA will be the provision of Services as described in the Services Agreement.
- 2.11 The duration of the Processing will be from the Commencement Date to termination of the Entire Agreement or following Transition of Services and return or deletion of Client data and Confidential Information from Our systems no later than 6 months of the termination to the extent allowed by law.
- 2.12 Client accepts that ICA cannot be relied on for the retrieval of Controllers data following the time elapsed referenced in clause 2.11.
- 2.13 ICA shall, in relation to any personal data processed in connection with the performance of its obligations under these Terms and Service Agreement undertake;
- a) to process personal data only on these Terms and documented Service Agreement unless ICA is required by Applicable Laws to otherwise process that personal data;
 - b) comply with Data Protection Regulations and Legislation applicable to the country We operate in and any applicable guidelines and codes of practice, having the force of law, issued by any Regulatory Authority having jurisdiction;
 - c) implement appropriate technical and organizational measures in accordance with Article 32 of the GDPR and corresponding Legislation to ensure a level of security appropriate to the risk of the processing;
 - d) in delivering Services, employ only Personnel who have demonstrably committed themselves to confidentiality or are under an obligation of confidentiality;
 - e) Ensure that all employees are:
 - I. are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and Use restrictions in respect of the Personal Data;
 - II. have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and
 - III. are aware both of Our duties and their personal duties and obligations under the Data Protection Legislation and this DPA.

- f) not use any sub processor not explicitly stated within the Entire Agreement without notification of Client at least 45 days before the commencement of Using the sub processor for any processing of Client Data unless that sub processor is currently engaged with ICA in which case Client can request a list of sub processors before Commencement Date or during the term of the Entire Agreement and that this shall constitute written permission;
- g) not transfer any personal data outside of the United Kingdom or European Economic Area or where Adequacy Decisions are permitted without Your written permission unless Client is notified with no less than 45 days notice;
- h) at Your request, return or destroy all Personal Data in Our possession as Data Processor, except as required by Law;
- i) Employ and retain a voluntary Data Protection Officer;
- j) Appoint in writing a representative within the European Union if required;
- k) Co-operate with Data Protection Authorities and other Supervisory Authorities.

2.14 We acknowledge and agree that We only determine the purposes and manner of the Processing for the purposes if We:

- a) Need to comply with any rule, regulation or Law imposed upon Us by Supervisory Authorities, Legal Authorities in the Member State or Third Country;
- b) Anonymise or pseudonymise (de-identifying) Personal Data and Related Data, including in aggregated format to provide analysis and comparisons and for maintaining, improving or developing services, including but not limited to the Services provided by Us under this DPA.

2.15 In the event Client provides written permission to the processing of Client Data by a sub processor, ICA shall:

- a) enter into written agreement with the sub processor containing substantially the same obligations with respect to the processing of the personal data as those set out in this Clause2;
- b) ensure the agreement meets the requirements of the Supervising Authority within Our jurisdiction including but not limited to Data Processing Agreements and Standard Contractual Clauses;
- c) ensure the sub processor has implemented appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of or accidental loss of or destruction of the personal data; and
- d) at all times remain liable for the acts and omissions of the sub processor in relation to the processing of the personal data.

2.16 For the avoidance of doubt, the Parties agree that the Third-Party Suppliers defined and agreed in accordance Section One shall be excluded from this DPA and it shall be the Client responsibility to ensure the legal basis to transfer and provide notices to Data Subjects it Processes on behalf of.

2.17 At Your request We may provide at Your cost Data Protection and/or Data Security audit reports and co-operate with You in any reasonable enquiries as to technical and organisational measures in relation to Processing Personal Data including but not limited to Cyber Essentials Certification and ISO27001 Audits.

2.18 For the term of this agreement, ICA shall maintain full and accurate records, in an agreed form, of all charges, prices, costs and expenses associated with and invoiced in respect of the Services and all processing of data under this agreement.

2.19 ICA agrees that Client, its regulator (for example the SRA, FCA) or any successor organisation and/or its agents shall be entitled throughout the continuance of this Agreement on reasonable advance written notice at Client own cost, allow Client, any designated auditors of, or other advisers and any regulators of Client to access any ICA premises, personnel, relevant records and

- 2.20 systems Used by ICA in the provision of the Services as may be reasonably required to verify that the Services are being provided in accordance with the Entire Agreement, the adequacy of ICA's financial standing and the upholding of its obligations;
- 2.21 Client shall Use its reasonable endeavours to ensure that the conduct of any audit referred to in clause 2.19 does not unreasonably disrupt ICA or delay the provision of any of the Services by ICA.
- 2.22 Subject to Client's obligations of confidentiality, ICA shall provide the Client and others described in this Clause 2 all reasonable co-operation, access, and assistance in relation to each audit.
- 2.23 ICA has in place appropriate technical and organisational measures, that Client acknowledges and warrants they have reviewed and approved, 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).
- 2.24 ICA will comply with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
- a) Assist Client at Client own cost in meeting Your obligations in relation in providing subject access, allowing data subjects to exercise their rights; completing data protection impact assessments; and
- b) maintain complete and accurate records and information to demonstrate its compliance with this clause2 and immediately inform Client if, in the opinion of ICA, an instruction infringes the Data Protection Legislation.
- 2.25 Each Party undertakes to notify the other Party without undue delay of an actual or suspected security breach, compromise, act, omission, error or theft leading to;
- a) accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data ICA Process under Your instruction;
- b) material loss or damage, including damage to the reputation to You, which for the avoidance of doubt shall be deemed to be material in every instance in which it occurs shall; promptly notify You of the circumstances and scope of such an event once known; dedicate appropriate resources to investigating; take appropriate steps to mitigate the scope of such an event and the damage, loss, and other negative consequence thereof; reasonably liaise with each Party and Supervisory Authorities in resolution of the incident.
- 2.26 Client will undertake to enter into a separate Agreement with its Data Subjects for each separate project relating to the processing of Data.
- 2.27 Either party may, at any time on not less than 30 days' notice, revise this DPA 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 the Entire Agreement).
- 2.28 Nothing within the Entire Agreement or this DPA relieves either Party of its own direct responsibilities under Data Protection Legislation.
- 2.29 Unless otherwise stated the parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this DPA.



Version Control

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V1.1	12.4.23	Pamela Blanchard