

# BYTES' GENERAL TERMS AND CONDITIONS

## 1. Definitions

1.1 In this Agreement, the following expression shall have the following meanings:

**Affiliate** means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity where "Control" has the meaning given in section 1124 of the Corporation Tax Act 2010;

**Applicable Laws** means all applicable laws, statutes, and regulation from time to time in force;

**Authorised Users** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Reseller Services;

**Azure** means Microsoft's cloud computing platform;

**Business Day** means a day that is not a Saturday or Sunday, Christmas Day, Good Friday, or any day that is a bank holiday under the Banking and Financial Dealings Act 1971;

**Business Hours** means the period from 9.00 am to 5.30 pm on any Business Day;

**CSP** means any Microsoft online service subscribed to by or on behalf of the Customer under the Microsoft Customer Agreement;

**Customer Information** means the information that the Customer must provide to Bytes in relation to the Reseller Services (including all relevant details which relate to the Customer's requirements for the provision of the Reseller Services and information more particularly described in the Statement of Work);

**Enterprise Agreement ("EA")** means a Microsoft volume licensing package;

**Good Industry Practice** means the exercise of that degree of skill, diligence, prudence, foresight, and operating practice which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the same type of undertaking as that of Bytes;

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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;

**Microsoft** means Microsoft Corporation;

**Order** means a Customer's order for the Reseller Services, consisting of the Quotation, corresponding purchase order and signed Statement of Work (if applicable);

**Partner Admin Link** means the Customer's link to Bytes which is recognised by Microsoft;

**Price** means the sums payable for the Reseller Services as set out in a Statement of Work and/or as calculated in accordance with clause 8

**Quotation** means the document submitted to the Customer by Bytes which lists the proposed Price for the requested Reseller Services;

**Server and Cloud Enrolment ("SCE")** means a Microsoft enrolment under an Enterprise Agreement;

**Service Token** means a voucher that can be exchanged for Bytes' Reseller Services, as detailed in clause 4;

**Reseller Services** means the services, to be provided by Bytes as specified in the Quote and/or Statement of Work;

**Statement of Work** means a detailed plan, agreed in accordance with the relevant Schedule, describing the services to be provided by Bytes, the timetable for their performance and the related matters; and

**VAT** means value added tax chargeable under the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 IT service management terms which have defined meanings in ITIL (including but not limited to "incident", "problem" and "resolution") will have the same meanings when used in this Agreement or any Statement of Work.

1.3 Clause, schedule, and paragraph headings will not affect the interpretation of this Agreement or any Statement of Work.

1.4 Wherever the words "other", "in particular", "includes", "including" or "for example" are used in this Agreement or any Statement of Work, they are to be construed without limitation.

1.5 References in this Agreement or any Statement of Work to a "person" include both natural and legal persons.

1.6 Unless otherwise stated, a requirement in this Agreement or any Statement of Work that a communication be "written" or "in writing" includes email but does not include facsimile.

1.7 A reference to an enacted law, a statute or a statutory instrument is a reference to it as it is in force at the relevant time, taking account of any amendment, extension, re-enactment, or replacement of it, and includes any subordinate legislation made under it and any binding decisions by a court of competent jurisdiction as to its or their correct interpretation. With effect from the date of the United Kingdom's exit from the European Union, a reference to a law of the European Union will be construed as a reference to its nearest English equivalent.

1.8 Any obligation in this Agreement or any Statement of Work on a person not to do something includes an obligation not to agree, allow or encourage that thing to be done.

1.9 Any remedy given to a Party in this Agreement or any Statement of Work will, unless expressly stated otherwise, be without prejudice to any other remedy that Party may have, whether under this Agreement or at law.

## 2. Commencement and Duration

2.1 This Agreement shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with clause 15.

## 3. Order Process

3.1 This Agreement sets out the terms and conditions and establishes a framework under which Bytes has agreed that it shall provide or procure the provision of, and Customer may from time to time purchase the Reseller Services.

3.2 Where the Parties agree that Bytes will provide Reseller Services to the Customer, they will follow the order process identified in the relevant Schedule.

3.3 This Agreement of itself, without an executed Statement of Work, does not oblige Bytes to provide any Reseller Services, nor the Customer to pay for them.

**3.4** Nothing in this Agreement creates any obligation of exclusivity on either Party. Bytes will be free to provide its Reseller Services to any other Party and the Customer will be free to source services similar to the Reseller Services from any other third party.

**3.5** This Agreement applies to the exclusion of any other terms that the Customer seeks to impose or incorporate (whether by reference in a purchase order for the Reseller Services or otherwise), or which are implied by trade, custom, practice or course of dealing.

**3.6** Any Quotation issued by Bytes shall not constitute an offer, is for informational purposes only and is only valid for the period stated on the Quotation.

**3.7** In the event of any inconsistency or contradiction, the following order of precedence will apply: **(a)** any terms provided in a specific Statement of Work or Quotation (as applicable) including but not limited to End User License Agreements;

**(b)** the main body of the relevant Statement of Work;

**(c)** the Schedules of this Agreement; and then

**(d)** the main body of this Agreement.

#### **4. Service Tokens**

**4.1** Customer may purchase from Bytes Service Tokens in advance of procuring a Service. Service Tokens shall be redeemable against any Service procured under this Agreement.

**4.2** Unless otherwise agreed in writing between the parties, Service Tokens shall be valid for twelve (12) months from date of purchase.

**4.3** Customer shall be provided with a price list identifying service costs based on Service Token utilisation.

**4.4** Customers may request statements from Bytes identifying their utilisation and Service Token balance on a monthly basis.

#### **5. Bytes' Responsibilities**

**5.1** Bytes shall appoint a manager for the Customer's account. The manager, along with the relevant support staff, will be reasonably available to the Customer on Business Days during Business Hours.

**5.2** Bytes shall hold quarterly business review meetings with the Customer, or as otherwise agreed between the parties.

**5.3** Bytes represents, warrants, and undertakes to Customer that: **(a)** Bytes will provide the Reseller Services in compliance with all applicable laws, regulations, professional standards, and industry accepted security standards and will obtain and maintain all the approvals, consents, licenses, and permissions necessary to enable the provision of the Reseller Services;

**(b)** Bytes will have appropriate agreements with its employees, agents, and contractors to enable Bytes to perform its obligations under this Agreement, including but not limited to the confidentiality obligations;

**(c)** Bytes will provide the Reseller Services to Customer in a professional, workmanlike manner and in accordance with the specifications and guidelines set forth in each Quotation and/or Statement of Work and Good Industry Practice..

#### **6. Customer's Responsibilities**

**6.1** The Customer warrants, represents and undertakes that: **(a)** it has the full capacity and authority to enter into and perform this agreement and that this agreement is executed by a duly authorised representative of the Customer;

**(b)** it has the authority to grant any rights to be granted to Bytes under this Agreement, including the right to provide the any software and/or hardware as may be indicated from time to time in a Statement of Work and for the same to be used in the provision of the Reseller Services and otherwise in connection with this Agreement;

**(c)** it shall comply with and use the Reseller Services in accordance with the terms of this Agreement (including any terms notified to the Customer by way of the Quotation or Statement of Work) and all Applicable Laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws;

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

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

**(f)** it shall co-operate with Bytes in all reasonable matters in a timely manner; and

**(g)** it shall provide to Bytes in a timely manner all reasonable document, information, items, and materials in any form (whether owned by the Customer or a third party) required for Bytes to carry out its duties under this Agreement and ensure that they are accurate and complete in all material respects which Bytes shall rely on.

**6.2** If Bytes performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants, or employees then, without prejudice to any other right or remedy it may have, Bytes shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

**6.3** The Customer grants Bytes the right to use the Customer as a reference for any Reseller Services provided in the form of a case study (or similar) in the future.

#### **7. Access Rights**

**7.1** Where the Customer procures applicable Microsoft products (as identified in clause 7.2), Customer shall provide Bytes with the associated access rights.

**7.2** For EA and SCE products, Customer shall provide to Bytes the following access:

**(a)** Contributor rights across all Azure subscriptions;

**(b)** Assignment of Partner Admin Link (to be completed during onboarding); and

**(c)** Valid and active Azure billing API key.

**7.3** For Azure and CSP products, Customer shall provide to Bytes global administrator access across tenants to enable technical support services.

**7.4** In the event any of the abovementioned access rights are revoked by the Customer, Bytes reserves the right to:

**(a)** In the case of CSP products, invoice the Customer for Microsoft's standard pricing in effect at that time; and

**(b)** charge an administrative fee equal to 3% of the cost of the relevant Service.

The charges set out in this clause 8.4 shall be applicable per invoice.

## **8. Payment**

**8.1** Customer agrees to pay Bytes in accordance with the payment or pricing schedule contained in an Order. Bytes reserves the right to charge the Customer the amount of any mistake, error or omission in the Price by Bytes which occurs as a result of the Customer providing incorrect information relied upon by Bytes in generating the Order.

**8.2** The Customer agrees that Bytes has the right at any time before delivery occurs to withdraw any discount and/or to revise any Price if there is a change in the cost of supply to Bytes whether by reason of exchange rate fluctuation or third-party price increases.

**8.3** Unless otherwise specified, VAT and any other duties or taxes payable, and all costs and charges in relation to carriage, insurance or similar shall be payable in addition to the Price.

**8.4** If any withholding or other taxes are required to be deducted from any money to be remitted to Bytes pursuant to this Agreement the Customer must ensure that no improper deductions are made, and the Customer shall provide Bytes with all necessary receipts, certificates and other documents and such reasonable information as Bytes may require to enable Bytes to claim any tax credit or other tax advantage.

**8.5** Unless otherwise agreed in the relevant Order or Schedule, payment is due in full without deduction or set-off within thirty (30) days of the date of an undisputed invoice. Time for payment is of the essence.

**8.6** If any undisputed payment becomes overdue, Bytes may charge the Customer interest at a rate of 4% per annum above the Bank of England base rate, or the highest amount permitted by law (if less).

**8.7** Without limiting its other rights or remedies, Bytes shall have the right to suspend the supply of the Reseller Services if the Customer fails to pay any undisputed amount due within fourteen (14) days of the due date for payment.

**8.8** The Price excludes the following, which shall be payable by the Customer monthly in arrears, following submission of an appropriate invoice: **(a)** the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Bytes engages; and

**(b)** any additional costs included in the Order or otherwise approved by the Customer from time to time.

**8.9** The Price for Reseller Services may be amended from time to time, upon written notice to the Customer. Any increase in the Price shall only affect the calculation of the Price for Orders placed after the date the Price increase takes effect.

**8.10** Bytes shall invoice the Customer for the Price at the intervals specified in the Order.

## **9. Intellectual Property Rights**

**9.1** Nothing in this Agreement will change the ownership of the Intellectual Property Rights of either Party.

**9.2** If and to the extent that it is not reasonably practicable for Bytes to perform its obligations under this Agreement without the use of any of the Intellectual Property Rights of the Customer, the Customer hereby grants to Bytes a royalty free, non-exclusive, non-transferable, licence to use such Intellectual Property Rights as reasonably necessary for such purpose. Bytes will not use such Intellectual Property Rights for any other purpose.

**9.3** If and to the extent that it is not reasonably practicable for the Customer to receive the Reseller Services without the use of any of the Intellectual Property Rights of Bytes or its licensors, Bytes hereby grants to the Customer a royalty free, non-exclusive, non-transferable, revocable licence, to use such Intellectual Property Rights as reasonably necessary for such purpose. The Customer will not use such Intellectual Property Rights for any other purpose.

**9.4** Neither Party will use the other Party's name, brand, logo, or get-up in its promotional materials or press releases without the other Party's prior agreement to each new use (not to be unreasonably withheld, conditioned, or delayed). Neither Party will do any act or thing reasonably likely to damage the other's brand or title to its trademarks, logos, and get-up. Any co-branded materials or collateral will be subject to the agreement of both Parties in each case (such agreement not to be unreasonably withheld or delayed).

**9.5** The Customer shall not remove any copyright, trademark or patent notices from any product or Service unless it has obtained prior written consent to do so.

## **10. Compliance with Laws and Policies**

**10.1** Each Party will comply with Applicable Law in connection with the exercise of its rights and the performance of its obligations under this Agreement.

## **11. Data Protection**

**11.1** The provisions of Schedule Three will apply to the extent that Bytes is acting as a processor on behalf of the Customer.

## **12. Confidentiality**

**12.1** Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients, or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 1.1(a).

**12.2** Each party may disclose the other party's confidential information: **(a)** to its employees, officers, representatives, or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

**(b)** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**12.3** No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

**12.4** Each party shall fully indemnify the other against any and all actions, claims, liability, costs, damages, charges, and expenses suffered or incurred in connection with or arising out of any unauthorized disclosure or use of Confidential Information by a third party or by any employee of any party to whom Confidential Information has been disclosed or who has been allowed access thereto.

## **13. Limitation of Liability**

**13.1** This clause 13 sets out the entire liability of the parties (including any liability for the acts or omissions of its employees, agents, and sub-contractors): **(a)** arising under or in connection with the Agreement;

**(b)** in respect of any use made by the Customer and any Authorised User of the Order; and

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

**13.2** Nothing in the Agreement shall limit or exclude either party's liability for: (a) death or personal injury caused by its negligence; or  
(b) fraud or fraudulent misrepresentation; or  
(c) any other liability which cannot be limited or excluded by applicable law.

**13.3** Subject to clause 13.2, neither party shall have any liability arising under or in connection with this Agreement for any: (a) Loss of profits, revenue, or an account of profits;  
(b) Loss of business or opportunity;  
(c) Loss of reputation or depletion of goodwill or similar losses;  
(d) Loss of anticipated savings;  
(e) Loss, loss of use or corruption of software, data, or information; or  
(f) Any special, indirect, consequential, or pure economic loss, costs, damages, charges, or expenses.

**13.4** If Bytes' performance of any of its obligations under this Agreement, a Quotation and/or any Statement of Work is prevented, hindered, or delayed by any act or omission by the Customer or any failure by the Customer to perform any relevant obligation ("Customer Default"): (a) without limiting or affecting any other right or remedy available to it, Bytes shall have the right to suspend performance of the Reseller Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve Bytes from the performance of any of its obligations in each case to the extent the Customer Default prevents, hinders, or delays Bytes' performance of any of its obligations;  
(b) Bytes shall not be liable for any costs, expenses, losses, liabilities, or damages whatsoever which are sustained or incurred by the Customer arising directly or indirectly from Bytes' failure or delay to perform any of its obligations as set out in this Clause 13.4; and  
(c) the Customer shall reimburse Bytes on written demand for any costs or losses sustained or incurred by Bytes arising directly or indirectly from the Customer Default.

**13.5** Except as expressly and specifically provided in the Agreement, Bytes shall not be liable, whether in tort (including for negligence), breach of statutory duty, contract, misrepresentation or otherwise for any loss, costs, damages, charges, or expenses caused by: (a) errors or omissions in any information, instructions or tools provided by the Customer (and its employees, agents, licensors, platform provider and other sub-contractors) in connection with an Order;  
(b) any actions taken by Bytes at the Customer's direction;  
(c) any use of reporting or analysis tools, hardware, software or other third party materials supplied by the Customer (or the Customer's employees, agents, licensors, and sub-contractors) for use in the provision of the Reseller Services; or  
(d) Customer Data that is inaccurate or incomplete;  
(e) Delays, delivery failures or other loss or damage resulting from the transfer of data over the internet or over the Customer's communications network;  
(f) Customer's misuse, neglect, default or abnormal use of any Service.

**13.6** 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 the Agreement. Any advice or guidance provided to the Customer free of charge is provided as-is without warranty of any kind and Bytes shall have no liability in relation thereto.

**13.7** Subject to the foregoing, each party's total liability in contract, tort (including negligence), for breach of statutory duty, misrepresentation, restitution or otherwise, arising under or in connection with the performance or contemplated performance of each Order shall be limited to one hundred per cent (100%) of the Price paid or payable by the Customer for the Order from which such liability has arisen.

**13.8** Both parties have entered into the Agreement knowing that their liability is limited as set out in this clause and that the charges payable under the Agreement and each Statement of Work have been fixed on that basis.

**13.9** The exclusion of liability for loss or corruption of software, data, or information in clause 13.3(e) shall not apply in respect of Orders comprising back-up services which are specifically designed to protect against such losses.

## **14. Insurance**

**14.1** During the term of this Agreement, Bytes shall maintain in force with a reputable insurance company the following insurance policies: (a) Public liability insurance policy with a limit of £10 million per claim;  
(b) Professional indemnity insurance policy with a limit of £5 million per claim;  
(c) Cyber and data insurance policy with a limit of £1 million in the aggregate; and  
(d) Employers' liability insurance policy with a limit of at least £10 million per claim.

## **15. Termination**

**15.1** Without affecting any other right or remedy available to it, either party may terminate this Agreement and/or any Statement of Works entered into under this Agreement with immediate effect by giving written notice to the other party if: (a) the other party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of forty-five (45) days after being notified in writing to do so;  
(b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;  
(c) the other Party passes a resolution for its winding up or a court makes an order for its winding up or dissolution (other than for the purpose of any bona fide amalgamation, merger, or reconstruction);  
(d) an administration order is made in relation to the other Party that has not been set aside within seven (7) days after the order has been made, or if a receiver is appointed over, or an encumbrancer takes possession of or sells, any material part of the assets or undertaking of the other Party;

- (e) the other Party arranges or composition with its creditors generally or makes an application to a court for protection from its creditors generally;
- (f) the other Party disposes of all its assets or a substantial part of its assets (other than for the purpose of any bona fide amalgamation, reconstruction, or merger);
- (g) the other Party commences or has commenced against it any insolvency, reorganisation, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceedings, and, if such case or proceeding is commenced against it, such case or proceeding is not dismissed within seven (7) days thereafter;
- (h) the other Party becomes insolvent or generally fails to pay or admits in writing its inability to pay its debts as they become due ("Insolvency Event"); or
- (i) the other Party is subject to any equivalent process or proceedings in any jurisdiction anywhere in the world.

**15.2** Without affecting any other right or remedy available to it, Bytes may terminate this Agreement and/or any Statement of Work entered into under this Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than forty-five (45) days after being notified in writing to make such payment.

## **16. Consequences of Termination**

**16.1** On termination of this Agreement: (a) the Customer shall pay to Bytes all outstanding unpaid invoices and interest and, in respect of the Orders supplied but for which no invoice has been submitted, Bytes may submit an invoice, which shall be payable in accordance with clause 8;

(b) the following clauses shall continue in force: clause 1 (Definitions), clause 20 (Non-solicitation), clause 9 (Intellectual Property Rights), clause 12 (Confidentiality), clause 13 (Limitation of Liability), clause 16 (Consequences of termination), clause 22 (Waiver), clause 24 (Severance), clause 29 (Dispute resolution), clause 30 (Governing law) and clause 32 (Jurisdiction).

**16.2** Termination or expiry of this Agreement shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## **17. Force Majeure**

**17.1** Neither party shall be liable for delay in performing or failure to perform obligations under the Agreement if the delay or failure results from "force majeure". For the purposes of the Agreement "force majeure" shall mean any Act of God, war, riot, act of terrorism, outbreak of hostilities, strike, pandemic, epidemic or other industrial action of any kind malicious damage default of suppliers or sub-contractors accident failure or breakdown of plant or machinery fire flood explosion any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the parties.

**17.2** In the event of any delay or failure under the Agreement resulting from "force majeure" either party may rely on the provisions of this condition for exemption from liability for non-performance part performance defective performance or delay and in the event that any such delay or failure continues for a period in excess of ninety (90) consecutive days either party shall have the right to terminate the Agreement immediately by giving notice to the other party.

## **18. Assignment and Other Dealings**

**18.1** The Customer may not, without the prior written consent of other party, assign, transfer, sub-contract, or deal in any other manner with all or any of its rights or obligations under the Agreement.

**18.2** Bytes may assign, transfer, sub-contract, or deal in any other manner with all or any of its rights or obligations under the Agreement by providing notice to the Customer.

## **19. TUPE**

**19.1** If and to the extent that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (**Employment Regulations**) apply to transfer any Customer's employees' contracts of employment to Bytes on the commencement of this Agreement or any Statement of Work or transfer any Bytes' employees' contracts of employment to the Customer or any replacement supplier of the Reseller Services on termination or expiry of the Agreement or any Statement of Work both parties shall comply with their respective obligations under the Employment Regulations.

## **20. Non-Solicitation**

**20.1** The Customer shall not, without the prior written consent of Bytes, at any time from the date on which any Reseller Services commence to the expiry of 12 months after the termination of such Reseller Services, solicit or entice away from Bytes or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant, or subcontractor of Bytes in the provision of such Reseller Services. Any consent given by Bytes shall be subject to the Customer paying to Bytes a sum equivalent to 20% of the then current annual remuneration of Bytes' employee, consultant, or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant, or subcontractor.

## **21. Variation**

**21.1** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives), unless such variation is to reflect changes in relevant laws, regulatory requirements or Microsoft imposed amendments, for which Bytes will provide no less than 30 days' written notice of the variation which shall apply on the expiry of such notice..

## **22. Waiver**

**22.1** A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

**22.2** A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**22.3** A party that waives a right or remedy provided under this Agreement or by law in relation to one party or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

### **23. Rights and Remedies**

**23.1** The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **24. Severance**

**24.1** If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal, and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

**24.2** If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid, and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

### **25. Entire Agreement**

**25.1** This Agreement constitutes the entire Agreement between the parties and supersedes and extinguishes all previous Agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

**25.2** Where subsequent Statement of Works are entered into between the parties, this Agreement will apply.

**25.3** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

### **26. No Partnership or Agency**

**26.1** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

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

### **27. Third Party Rights**

**27.1** No one other than a party to this Agreement, their Affiliates, successors and permitted assignees, shall have any right to enforce any of its terms.

### **28. Notices**

**28.1** Any notice given to a party under or in connection with this Agreement shall be in writing and shall be: **(a)** delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

**(b)** sent by fax to its main fax number or sent by email to the address specified in the Statement of Work.

**28.2** Any notice shall be deemed to have been received: **(a)** if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

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

**(c)** if sent by fax or email, at 9.00 am on the next Business Day after transmission.

**28.3** This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **29. Dispute Resolution Procedure**

**29.1** If any dispute arises in connection with this Agreement, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties within fourteen (14) days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.

**29.2** Unless otherwise agreed, the mediation will start not later than twenty-eight (28) days after the date of the ADR notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

### **30. Export Control**

**30.1** Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement in breach of any applicable laws or regulations, including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

### **31. Governing Law**

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

### **32. Jurisdiction**

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

## **SCHEDULE ONE – HARDWARE AND THIRD-PARTY SOFTWARE PROCUREMENT**

### **1. Definitions**

1.1 In this Schedule, the following expression shall have the following meanings:

**Delivery Location** means set out in the Goods Order or such other location as the parties may agree in writing.

**End User Licence Agreement** means the usage terms for the Third Party Software provided by the Vendor which govern the Customer's usage of the Third Party Software;

**Goods** means the goods (or any part of them) set out in the Quotation including Hardware and Third Party Software;

**Goods Description** means any specification for the Goods which may be provided to the Customer;

**Goods Order** means an order placed upon Bytes by the Customer for the Goods, encompassing the Customer's purchase order, the Quotation and the relevant Manufacturer or Vendor terms which apply (as necessary);

**Hardware** means all physical telecommunications, networking, computers, and computer equipment (including but not limited to switches, routers, cables, servers, racks, cabinets, and peripheral accessories);

**Manufacturer** means a third party who makes or develops the Hardware;

**Third Party Software** means all software owned by or licensed to the Customer from a third party owner (whether or not supplied by Bytes) and which comprises part of the Goods; and

**Vendor** means a third party who makes or develops the Third Party Software.

### **2. Purpose**

2.1 This Schedule shall, in conjunction with the main body of the Agreement, govern the Customer's procurement of Goods from Bytes.

### **3. Order**

3.1 The Customer may request at any time a Quotation for the Goods from Bytes. Such Quotation shall be valid until the end of the calendar month in which it is raised.

3.2 To place a Goods Order, Customer must provide a purchase order to Bytes which matches the relevant Bytes Quotation for those Goods.

3.3 Each Quotation issued by Bytes for the Goods is subject to and incorporates the terms of the Agreement and this Schedule, along with the relevant Manufacturer or Vendor terms (as applicable).

3.4 The Goods Order constitutes an offer by the Customer to purchase Goods from Bytes in accordance with this Schedule as identified in the relevant Quotation.

3.5 Bytes shall be under no obligation to provide a Quotation for the Goods when requested by the Customer. Bytes may reject any Goods Order for which it does not receive a corresponding purchase order within a reasonable time.

3.6 Each Goods Order gives rise to a separate and distinct agreement under this Agreement. Any event of default by a party relating to one Goods Order will not be considered an event of default under any other Order for Goods or otherwise.

3.7 Affiliates of the Customer may place a Goods Order with Bytes by way of this Agreement. Such Affiliate agrees to be bound by this Agreement and will be considered "Customer". Any Affiliate that enters into a Goods Order is liable for its own obligations. Affiliates may not amend, modify, or change the terms of this Agreement, except as they may specifically apply to their Goods Order and only with the written agreement of Bytes.

3.8 Bytes reserves the right to require upfront payment for Hardware in line with best practice and governance policies.

### **4. Goods**

4.1 The Goods will be described in either an applicable Goods Description or in the relevant Quotation. Unless otherwise agreed, the Goods are supplied in accordance with the Manufacturer's standard specifications as these may be improved, substituted, or modified.

4.2 Bytes will use its reasonable endeavours to advise the Customer of any variation for whatsoever reason in the Goods Description, Manufacturer's specifications, or technical data of the Goods as soon as it receives any such notice thereof from the Manufacturer. Bytes shall not be liable in respect of any loss or damage caused by or resulting from such variation including for curtailment or cessation of supply of Goods following any such variation.

### **5. Delivery**

5.1 Bytes shall deliver the Goods to the Delivery Location set out in the Order or such other location as the parties may agree in writing (the "**Delivery Location**").

5.2 Delivery of the Hardware shall be completed on the completion of unloading of the Hardware at the Delivery Location. However, risk in the Goods shall pass to the Customer in accordance with Clause 7.1.

5.3 At the time of delivery, the Customer must check that the quantity of Hardware matches the quantity set out on the proof of delivery ("**POD**") and that the exterior of the Hardware are in good condition. The Customer must sign the POD accordingly. If the exterior of the Hardware is damaged the Customer must indicate this on the POD. The Customer must inform Bytes of any difference to quantity or of damage as soon as possible and in any event within three (3) Business Days of the delivery.

5.4 A signed POD by or on behalf of the Customer or signing the POD "unchecked" or "unexamined" or any such similar wording, shall be conclusive evidence of delivery and (except to the extent that any damage or discrepancy is noted on the POD) that it was received in good order and condition and accordingly no claims shall be bought in respect of the delivery claiming the contrary.

5.5 The Customer must inspect the Hardware as soon as is practicable after delivery is complete. If any Hardware is damaged, incorrect, or not delivered, the Customer must notify Bytes within three (3) Business Days of the delivery or expected delivery. For the avoidance of doubt, the Customer is still required to notify Bytes as set out in this Clause 5.5 notwithstanding anything noted by the Customer on the POD.

5.6 Delivery of Third Party Software shall be done electronically, unless otherwise agreed.

5.7 Any dates quoted for delivery of the Goods are estimates only, and the time of delivery is not of the essence.

5.8 Despatch may be postponed due to conditions beyond Bytes' reasonable control, such as a Force Majeure Event, a delay caused by the carrier or the Customer's failure to provide Bytes with an adequate delivery address detail or any other instructions that are relevant to the supply of the Goods, and in no event shall Bytes be liable for any damages or penalty for delay in despatch or delivery of the Goods or consider any claims for compensation.

**5.9** Bytes may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **6. Quality**

**6.1** Subject to Clause 6.3, Bytes warrants that, on delivery, the Goods shall: **(a)** conform in all material respects with any applicable Goods Description; and **(b)** be free from material defects in design, material, and workmanship.

**6.2** Bytes warrants that it has licence to supply all Goods to the Customer.

**6.3** All Software is supplied on an "as is" basis only. Any warranty for the Software shall be provided only by the relevant Vendor on the terms in the End User Licence Agreement. Bytes does not provide any warranty for the Software.

**6.4** The sole obligation of Bytes in connection with the supply of Third Party Software is to use all reasonable endeavours to obtain and supply a correct version from the Manufacturer concerned in the event that such Third Party Software should fail to conform to the Quotation, provided always that the Customer notifies Bytes of any such non-conformity within thirty (30) days of the date of delivery of the applicable Third Party Software.

**6.5** Subject to Clause 6.6, Bytes shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if the Customer returns the Goods in accordance with Clause 9.1. Bytes will not consider any claim for compensation, indemnity, or refund under liability unless it has been established or agreed with the Manufacturer.

**6.6** Bytes shall not be liable for the Goods' failure to comply with the warranty in Clause 6.1 if: **(a)** the Customer makes any further use of such Goods after giving a notice in accordance with Clause 5.5;

**(b)** the defect arises because the Customer failed to follow Bytes', or the Manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good industry practice;

**(c)** the Customer alters or repairs such Goods without the written consent of Bytes;

**(d)** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

**(e)** without prejudice to Clause 6.1(b), the Goods differ from their specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

**6.7** Except as provided in this clause 6, Bytes shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clauses 6.1 and 6.2 and shall not be liable for the cost of labour or other expenses incurred in repairing defective or non-conforming parts.

**6.8** The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Bytes.

**6.9** Except as specifically set out in this Clause 6, Bytes disclaims and excludes all other warranties, whether express or implied, by statute or otherwise, including but not limited to the warranties of description, design, satisfactory quality, and fitness for a particular purpose, or arising from any previous course of dealing, usage, or trade practice.

## **7. Title and Risk**

**7.1** The risk in the Hardware shall pass to the Customer at the time the Goods are delivered to the Delivery Location.

**7.2** Title to the Hardware shall not pass to the Customer until Bytes is in receipt of payment in full (in cash or cleared funds) for the Hardware.

**7.3** Until title to the Hardware has passed to the Customer, the Customer shall: **(a)** store the Hardware separately from all other goods held by the Customer so that they remain readily identifiable as Bytes' property;

**(b)** not remove, deface, or obscure any identifying mark or packaging on or relating to the Hardware;

**(c)** maintain the Hardware in satisfactory condition and keep them insured against all risks for their full price on Bytes' behalf from the date and time at which risk passes;

**(d)** not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Hardware; and

**(e)** notify Bytes immediately if it becomes subject to an Insolvency Event.

**7.4** If title to the Hardware passes to the Customer before the Customer becomes subject to an Insolvency Event, then, without limiting any other right or remedy Bytes may at any time: **(a)** require the Customer to deliver up, at its own cost, all Hardware in its possession which have not been irrevocably incorporated into another product; and

**(b)** if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Hardware is stored, using reasonable force if necessary, in order to recover them.

**7.5** Despite Bytes' retention of title to the Hardware, Bytes reserves the right to take legal proceedings to recover the price of Hardware supplied should the Customer fail to make full payment by the invoice due date.

## **8. Customer Responsibilities**

**8.1** The Customer shall: **(a)** ensure that Bytes or the Manufacturer (as applicable) will be provided with any access to premises, office accommodation and other facilities as reasonably required to fulfil their obligations under this Agreement; and

**(b)** provide Bytes and the Manufacturer with such information and materials as they may reasonably require in order to supply the Goods and ensure that such information is complete and accurate in all material respects.

## **9. Returns**

**9.1** All Hardware returns can only be facilitated where the Manufacturer allows for the return of such Hardware.

**9.2** Bytes reserves the right to reject any Hardware which do not comply with the conditions set out by the relevant Manufacturer.

**9.3** Bytes reserves the right to test all Hardware returned as faulty and to return to the Customer (at the Customer's expense) any Hardware found not to be faulty. Bytes also reserves the right to levy an additional reasonable charge to cover the cost of such testing.

**9.4** Where Bytes agrees to the return of Hardware, the Customer shall bear the costs associated with the delivery of the Hardware to Bytes' nominated returns address.

**9.5** Bytes reserves the right to levy a reasonable administration charge in respect of the rotation of Hardware and returns.



**10. Intellectual Property Rights**

**10.1** The Customer hereby acknowledges that any Intellectual Property Rights used on or in relation to the Hardware or any Third Party Software supplied hereunder, including, but not limited to, any title or ownership rights, shall at all times and for all purposes vest and remain vested in Bytes, the manufacturer, or the Vendor (as applicable).

**10.2** The Customer hereby acknowledges that it is its sole responsibility to comply with the End User License Agreement attaching to Third Party Software supplied and delivered by Bytes, including the execution and return of such an End User License Agreement. The Customer is hereby notified that failure to comply with such terms and conditions could result in the Customer being refused a licence or having the same revoked by the proprietary owner. The Customer further agrees to indemnify Bytes and keep Bytes indemnified and hold it harmless in respect of all losses suffered or incurred by Bytes as the result of any breach by the Customer of the relevant End User License Agreement.

**10.3** Unless otherwise expressly agreed in writing, no title or ownership of Intellectual Property Rights licensed to the Customer is transferred to the Customer or End User under any circumstances.

## SCHEDULE TWO: SERVICES

### 1. Definitions

1.1 In this Schedule, the following expression shall have the following meanings:

**Agreed Work Location** means the Customer's premises or Bytes' offices at which the Services may be delivered;

**Deliverables** means all documents, products and materials developed by Bytes or its agents, subcontractors, consultants, and employees in relation to the Services in any form, including data, reports and specifications which are to be delivered to the Customer;

**Good Industry Practice** means the exercise of that degree of skill, diligence, prudence, foresight, and operating practice which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the same type of undertaking as that of Bytes;

**Managed Services** means Services which are not one off but are ongoing and recurring in nature and which renew automatically at the end of the Service Term unless notice is given in accordance with clause 10.2;

**Professional Services** means the one-off implementation, support, or other professional services to be provided by Bytes (or its authorised sub-contractor) to the Customer, as set out in the relevant Statement of Work;

**Service Commencement Date** means, in respect of a Statement of Work, the date on which Bytes makes the Services available to the Customer;

**Service Provider** means the provider of the Services to the Customer as identified in the Statement of Work (for the avoidance of doubt this may be an authorised sub-contractor of Bytes);

**Service Term** means the term identified in a Statement of Work within which the Services will take place;

**Services** means either the Professional Services or Managed Services as detailed in the relevant Statement of Work; and

**Services Order** means a Customer's Order for Professional Services or Managed Services, consisting of the signed Statement of Work, Quotation, and purchase order.

### 2. Purpose

2.1 This Schedule shall, in conjunction with the main body of the Agreement and the relevant Statement of Work, govern the Customer's procurement of Services from Bytes.

### 3. Statement of Work

3.1 The Customer may request at any time a Quotation and Statement of Work for Services from Bytes.

3.2 Services may be performed by Bytes or by a trusted Service Provider from Bytes' team of Services partners. The Service Provider for each Statement of Work will be clearly identified. For the avoidance of doubt, Bytes shall remain fully liable for the provision of the Services regardless of the identified Service Provider.

3.3 To place a Services Order, Customer must provide a purchase order to Bytes (which matches the relevant Bytes Quotation) and a signed copy of the relevant Statement of Work. A Services Order shall not be valid until Bytes are in receipt of these documents.

3.4 The Customer understands and agrees that each Statement of Work will contain terms and conditions specific to those Services being procured. Each Statement of Work issued by Bytes for the Services shall be subject to and incorporate the terms of the Agreement and this Schedule.

3.5 The Services Order constitutes an offer by the Customer to purchase Services from Bytes in accordance with this Schedule as identified and agreed in the relevant Statement of Work.

### 4. Service Commencement

4.1 Bytes will use best efforts to ensure that commencement of the Services occurs within thirty (30) days of the Statement of Work being signed, but time will not be of the essence.

4.2 The Statement of Work may specify a target "Service Commencement Date". This is an estimate only, and failure to adhere to any target Service Commencement Date shall not constitute a material breach by Bytes.

4.3 The Service Commencement date is subject to the Customer fulfilling its obligations under clause 6 and to any other corresponding dependencies on the Customer as set out in the relevant Statement of Work.

### 5. Bytes' Obligations

5.1 Bytes shall supply all at the Agreed Work Location(s) unless separately engaged by the Customer to attend an alternative site. Any travel and accommodation for onsite work shall be chargeable at cost unless otherwise agreed between the parties.

5.2 Where Bytes staff are required to attend the Customer's offices they shall adhere to the Customer's policies and procedures whilst on site provided the policies and procedures have been clearly highlighted and communicated to Bytes in advance or on the day Bytes staff attend site.

5.3 Bytes reserves the right to: (a) Modify Bytes' system, its network, system configurations or routing configuration; or (b) modify or replace any hardware or software in its network or in equipment used to deliver any Services over its network.

provided that this has no adverse effect on Bytes' obligations under this Agreement and its provision of the Services. If such changes will have an adverse effect, Bytes shall notify the Customer and the parties shall follow the change control procedure detailed in the Statement of Work.

### 5.4

### 6. Customer Obligations

6.1 Customer will not:

(a) except as may be allowed by law which is incapable of exclusion by agreement between the parties: (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, translate, transmit or distribute all or any portion of the Services in any form and by any means, other than as expressly permitted by this agreement; or (ii) attempt to reverse compile, reverse engineer, disassemble, or gain any unauthorized access to or privileges in the Services, or any of the technologies, programs and systems comprising it or supporting their operation;

(b) access or use the Services in order to build a product or service which competes with them;

(c) through action or negligent inaction permit the Services to be used by any person who is not authorised to do so;

**(d)** resell or otherwise provide or make available the Services to third parties without involvement from the Service Provider and Bytes;

**(e)** upload to, or communicate or distribute through, the Services any content or material: **(i)** that is unlawful, defamatory, obscene, pornographic, abusive, harassing, or which tends to promote discrimination against any person or class of persons based on a characteristic protected by applicable law; or

**(ii)** which infringes or is reasonably likely to infringe the Intellectual Property Rights or other rights of any person, or misappropriates or misuses the trade secrets of any person, or which is likely to result in a breach of any obligation of confidence owed to any person;

**(f)** use or attempt to use or misuse the Services in any way that is criminal or otherwise unlawful;

**(g)** damage, disable or impair the Services, attack them, or use them as an attack vector or means of attack against any other system, computer, or network;

**(h)** carry out or attempt performance or penetration testing against the Services without prior written consent (and all such testing must be carried out in accordance with the Bytes and/or the Service Provider's applicable policies);

**(i)** circumvent or attempt to circumvent any technical measures or restrictions controlling access to or use of the Services or gain or attempt to gain any greater level of access to the Services or to Bytes and/or the Service Provider's systems than is permitted by the Statement of Work.

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

**6.3** The Customer shall: **(a)** provide Bytes with: **(i)** all necessary co-operation in relation to this Agreement and the relevant Statement of Work; and

**(ii)** all necessary access to such information as may be reasonably required by Bytes,

**(b)** in order to provide the Services, including customer data, security access information, and (subject to providing any confidentiality undertakings reasonably required by the Customer) software interfaces to the Customer's other business applications; **(i)** provide such personnel assistance as may be reasonably requested by Bytes from time to time;

**(ii)** appoint a Customer project manager, who shall have the authority to contractually bind the Customer on all matters relating to the Statement of Work. The Customer shall use reasonable endeavours to ensure continuity of the Customer's project manager, but has the right to replace the individual from time to time where reasonably necessary in the interests of the Customer's business; and

**(iii)** carry out all other Customer responsibilities set out in this Schedule and any Statement of Work 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, Bytes may adjust any timetable or delivery schedule set out in the Statement of Work as reasonably necessary.

**6.4** The Customer shall promptly inform Bytes if it suspects or uncovers any breach of security and shall use all commercially reasonable endeavours to promptly remedy such breach.

## **7. Intellectual Property Rights**

**7.1** If and to the extent that it is not reasonably practicable for Bytes to perform its obligations under this agreement, or for the Customer to receive the Services, without the use of any of the Intellectual Property Rights of the other party, the parties hereby grant each other, a royalty free, non-exclusive, non-transferable, license to use such Intellectual Property Rights solely and exclusively for the provision of Services.

**7.2** Neither party will use the other party's name, brand, logo, or get-up in its promotional materials or press releases without the other party's prior agreement to each new use (not to be unreasonably withheld, conditioned, or delayed). Neither party will do any act or thing reasonably likely to damage the other's brand or title to its trademarks, logos, and get-up. Any co-branded materials or collateral will be subject to the agreement of both parties in each case (such agreement not to be unreasonably withheld or delayed).

**7.3** All Deliverables created specifically for and provided to the Customer by Bytes under a Statement of Work shall, upon payment for the Services, become the property of the Customer. Any inventions, designs, intellectual property, or other derivative works of Bytes shall vest in and remain the exclusive property of Bytes or its Service Provider (as applicable).

## **8. Warranties**

**8.1** Bytes warrants to the Customer that the Services provided will substantially correspond to the Statement of Work, however without prejudice to any other rights or remedies, if the Customer believes that the Services fail to conform with the Statement of Work, the Customer may elect to allow Bytes to correct the non-conformities and demonstrate to the Customer's reasonable satisfaction that the non-conformities have all been resolved.

## **9. Indemnities**

**9.1** Bytes will indemnify the Customer against any liability or cost (including reasonable legal fees) incurred by the Customer as a result of any claim by a third party that the Services, when used in accordance with this Statement of Work, infringes the Intellectual Property Rights of that third party (a "Third Party IP Claim"), but only if the Customer: **(a)** promptly informs Bytes in writing of such Third-Party IP Claim, setting out reasonable details;

**(b)** does not make any admission, agree any settlement, or otherwise dispose of such Third-Party IP Claim without Bytes' prior written consent;

**(c)** on request by Bytes, gives Bytes conduct of such Third-Party IP Claim (including its negotiation and settlement); and

**(d)** gives Bytes all reasonable information and assistance which Bytes may request to assist it in defending or settling such Third-Party IP Claim.

**9.2** Bytes' obligations in clause 9.1 will not apply if the Third-Party IP Claim is based on: **(a)** the use of the Services in combination with products or services not supplied by Bytes or not identified as compatible with the Services in the Statement of Work;

**(b)** any specification or set of requirements for a Service not detailed within the Statement of Work;

**(c)** any modification or alteration of the Services by any person other than Bytes or its authorised Service Providers;

- (d) any third-party software, hardware or service comprised in the Services, except to the extent that Bytes is able to achieve equivalent recovery from that third party (Customer recognising that only a fair portion of such recovery may be allocated to the Customer); or
- (e) the failure of the Customer to comply with this Agreement or to follow Bytes' reasonable instructions in respect of the Services.

**9.3** If the Services or any part of them are found to infringe a third party's Intellectual Property Rights or other rights, whether as a result of a Third-Party IP Claim or otherwise, then Bytes may, at its own expense: (a) modify the Services to avoid the infringement; or

- (b) procure for the Customer from the third-party right holder the right to continue to receive the Services,

and, if neither of the above is (in Bytes' reasonable opinion) commercially practicable, terminate the Statement of Work in which case Bytes will have no further liability to the Customer beyond that described in this clause 9.

#### **10. Term and Termination**

**10.1** The Statement of Work shall have effect from the Start Date for the duration of the initial term specified in the Statement of Work. A Statement of Work for a Managed Service shall auto-renew following the initial term for successive terms of equal length to the initial term, unless not less than 30 days' written notice is provided by the Customer to Bytes before the end of the initial term.

**10.2** Either party may terminate a Statement of Work on ninety (90) days' written notice to the other if: (a) the other party commits any material breach of the terms of this Schedule and (if the breach can be remedied) it fails to remedy the breach within thirty (30) days or other mutually agreeable timeframe; or

- (b) the other party commits a material breach of this Agreement which is not capable of being remedied.

#### **11. Consequences of Termination**

**11.1** Termination of a Statement of Work will not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination.

**11.2** On termination or expiry of this Agreement for whatever reason, to the extent requested by the Customer, Bytes shall provide reasonable assistance to the Customer, or any successor supplier of replacement Services substantially similar to the Services, to allow the Customer to obtain such replacement Services with minimal disruption and such assistance does not exceed twenty-one (21) Business Days duration.

**11.3** The Customer shall pay Bytes' reasonable pre-approved costs in fulfilling its obligations under Clause 11.2. Bytes shall be under no obligation to provide the support detailed in clause 11.2 without such costs being fulfilled.

**11.4** Any provision of this Agreement that expressly, by implication or by its nature is intended to come into or continue in force on or after termination will do so.

#### **12. Service Suspension**

**12.1** In addition to the termination rights in clause 10, Bytes will be entitled to suspend provision of the Services if: (a) Customer breaches clause 6 (Customer obligations);

- (b) Bytes becomes entitled to terminate this Agreement or any Statement of Work; or

- (c) Bytes, acting reasonably, deems it necessary to defend its systems or those of its other customers.

**12.2** Bytes will reinstate the Services: (a) in the case of suspension pursuant to clause 12.1 inclusive, as soon as practicable following the Customer's rectification of the reason for suspension; and

- (b) in the case of suspension pursuant to clause 12.1(b) as soon as practicable when Bytes acting reasonably, no longer considers it necessary. The Customer will not be entitled to any refund or discount in respect of any period of suspension.

## SCHEDULE THREE: DATA PROCESSING

### 1. Definitions

1.1 In this Schedule, the following expression shall have the following meanings:

**Data Processing Details** means the description of the Personal Data processing activities contemplated by this Agreement, as set out in the applicable Statement of Work;

**Data Protection Law** means the Data Protection Act 2018 and all applicable laws and regulations from time to time in force relating to data protection, privacy, and the processing of personal data, including the GDPR;

**DP Regulator** means a regulatory, administrative, supervisory, or governmental agency, body, or authority (whether regional, national, or supranational) with jurisdiction over the Personal Data processing activities contemplated by this Agreement;

**GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4));

**Loss** means any and all loss, liability, cost (including legal costs), expenses, actions, adverse judgement, proceedings, claims, penalties, fines and demands and Losses shall be construed accordingly;

**Personal Data** means the personal data that is processed by Bytes on behalf of the Customer in accordance with this Agreement, as further described in the Data Processing Details;

**Safe Countries** means the countries that comprise the EEA, and in the event that the United Kingdom or any part of it falls outside the EEA, those countries, and the United Kingdom or that part of it; and

**Security Incident** means (a) the unlawful or unauthorised processing of Personal Data; or (b) any breach of security affecting the Personal Data (including (without limitation) a personal data breach as defined in the GDPR).

1.2 Unless the context otherwise requires "controller", "processor", "processing/process", "personal data", "personal data breach" and "data subject" shall be interpreted and construed by reference to Data Protection Law.

1.3 References to a law of the European Union include a reference to that law as incorporated into the laws of the United Kingdom at any time before or after the United Kingdom ceases to be a Member State of the European Union.

### 2. Data Protection

2.1 The Parties hereby agree that, to the extent Bytes processes Personal Data on behalf of the Customer, Bytes will act as a processor for and on behalf of the Customer (as controller). A detailed description of the data processing activities, including the Personal Data concerned, is set out in the Data Processing Details.

2.2 To the extent that Bytes acts as a processor for the Customer with respect to the Personal Data, Bytes shall: **(a)** only process the Personal Data for the purposes of performing its obligations under this Agreement and in accordance with the written instructions given by the Customer from time to time, unless Bytes is subject to an obligation under applicable law (including Data Protection Law) of the UK, European Union or a member state of the European Union to do otherwise, in which case Bytes shall (unless prohibited by law on important grounds of public interest) notify the Customer in advance of that legal obligation;

**(b)** immediately inform the Customer if, in Bytes' opinion, an instruction from the Customer breaches a requirement of Data Protection Laws, provided that the foregoing obligation shall not be construed as an obligation on Bytes to provide legal or professional advice or services to the Customer and Bytes shall have no liability for any Losses suffered or incurred by the Customer as a result of Bytes' failure to notify the Customer as set out in this paragraph;

**(c)** at the reasonable request of the Customer (and at the Customer's expense), provide to the Customer such reasonable assistance as is contemplated by Article 28(3)(e) of the GDPR;

**(d)** notify the Customer in writing of each Security Incident of which it becomes aware. Bytes shall (to the extent feasible) ensure that the initial notification comprises the information required under Article 33(3) of the GDPR. In the event that Bytes is unable to provide all of the information required under this Clause in accordance with the time limits set out above, Bytes shall provide as much information as it is able to within those time limits and shall provide all further information as soon as reasonably practicable thereafter;

**(e)** considering the nature of the processing and the information available to Bytes; upon the reasonable request of the Customer, and at the Customer's sole cost and expense, Bytes shall, within such reasonable timescales as Bytes agrees in writing, provide the Customer the following assistance; **(i)** provide the Customer with information in order to enable the Customer to produce data protection impact assessments ("DPIAs");

**(ii)** considering the state of the art, the costs of implementation and the nature, scope, context, and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, in relation to the Personal Data, assist the Customer in implementing appropriate security measures appropriate to that risk;

**(iii)** where a DPIA requires provide the Customer with information required in relation to consulting the DP Regulator; and

**(iv)** following a Personal Data breach: **(A)** provide the Customer with such information as is necessary to allow the Customer to notify data subjects; and

**(B)** provide the Customer with such information as is required under Article 33(3) of the GDPR.

- (f) ensure that appropriate technical and organisational measures are in place to safeguard against the unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data and such measures shall meet the requirements of Article 32 of the GDPR on and from the date the GDPR applies.
  - (g) ensure that any of its personnel who are authorised to process the Personal Data are bound by a duty of confidence to maintain the confidentiality of the Personal Data;
  - (h) upon conclusion of the Personal Data processing activities contemplated by this Agreement, Bytes will (as directed by the Customer or, in the absence of any direction, as elected by Bytes) securely return or securely destroy the Personal Data and all copies in Bytes 's power, possession or control, unless Bytes is required to keep such Personal Data for its compliance with applicable law.
- 2.3** Subject to paragraph 2.4, Bytes shall provide the Customer with all information reasonably requested by the Customer to enable the Customer to verify Bytes' compliance with this paragraph 2. Without prejudice to the foregoing and upon one months' prior written notice from the Customer, Bytes shall assist the Customer in undertaking an audit of Bytes' compliance with the requirements of this paragraph 2 with respect to the Personal Data, provided that the scope of the audit and manner in which it is conducted will be agreed between the Parties in advance and shall ensure such audit does not adversely affect Bytes' operations. The Customer shall act reasonably and in good faith in exercising its audit rights under this paragraph 2.3 and Bytes' costs and expenses incurred in assisting the Customer with each audit shall be borne by the Customer. The Customer's audit rights as set out in this paragraph 2.3 shall not be exercised by the Customer more frequently than once a year.
- 2.4** The provisions of paragraph 2.3 shall not apply to the extent that Bytes has commissioned an independent third party audit which addresses the same audit scope as described at paragraph 2.3 within 6 months of the Customer's audit request and Bytes confirms there are no known material changes in the processing audited. In such circumstances the Customer agrees to accept those findings in lieu of requesting an audit.
- 2.5** The Customer acknowledges that Bytes may transfer Personal Data outside of the Safe Countries. Bytes shall ensure that, where such transfers take place, safeguards are put in place in order to comply with Data Protection Law and the Customer agrees to provide such assistance as is reasonably required by Bytes to ensure such transfer complies with such Data Protection Law.
- 2.6** Bytes may subcontract the processing of Personal Data to any third party (each sub-processor). Bytes shall notify the Customer of each sub-processor that it intends to subcontract the processing of Personal Data to. If within fourteen (14) days of receipt of that notice, the Customer notifies Bytes in writing of any objections to the proposed appointment (such objections to be made on reasonable grounds which shall be limited to a reasonable belief of the Customer that the requirements of paragraph 2.7 have not been satisfied), Bytes shall not appoint (nor disclose the Customer's Personal Data to) that proposed sub-processor until reasonable steps have been taken to address the objections raised by the Customer and the Customer has been provided with a reasonable written explanation of the steps taken. The Customer acknowledges and agrees that any objection raised by the Customer may cause or contribute to a delay or failure by Bytes and/or its sub-processor to perform Bytes' obligations under this Agreement, and that Bytes shall not be liable for any Losses suffered or incurred by the Customer arising out of or in connection with any such delay or failure.
- 2.7** With respect to each sub-processor Bytes will ensure that it has in place an agreement with the sub-processor that provides no less protection for Personal Data than those set out in paragraph 2. Bytes shall remain responsible for the acts and omissions of its sub-processors.
- 2.8** This paragraph shall remain in full force and effect at all times, notwithstanding the termination or expiry of this Agreement.

<b>Data Protection Details</b>	
Subject matter, nature, and purpose of the Processing	Subject Matter: The provision of [insert details] by Bytes to the Customer. Nature: Processing activities, such as storage, retrieval, analysing, data collection and data transfer will all be undertaken by Bytes. Purpose: Personal Data is processed in order for Bytes to deliver the Services set out in the Statement of Work
Duration of the Processing	For the term of this Agreement unless the Agreement is terminated earlier in accordance with its terms.
Type of Personal Data	Personal Data: Contact data (name, address, email address, phone numbers) Special Categories of Personal Data: None Criminal Records Data: None
Categories of Data Subjects	Past, present, and prospective employees and personnel.