

# Standard Terms and Conditions

## 1. Definitions and Interpretation

- 1.1 These terms represent the agreement (“**Agreement**”) that governs the purchase of computer hardware, computer software, support, consultancy and other information technology-related services from Telefónica Tech UK Limited (“Telefónica Tech”) by the Customer, defined in the Quotation and/or Statement of Work.
- 1.2 In this Agreement the following words and phrases shall, unless the context otherwise requires, have the following meanings:

<b>Applicable Law</b>	means as applicable and binding on the Customer, Telefónica Tech and/or the Agreement:  (a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party or this Agreement is subject and/or in any jurisdiction that the services under this Agreement are provided to or in respect of;  (b) the common law and laws of equity as applicable to the parties from time to time;  (c) any binding court order, judgment or decree; or  (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party’s assets, resources or business;
<b>Assumptions</b>	As defined in the Statement of Work
<b>Background IPR</b>	means any and all IPR that are owned by, or licensed to, Telefónica Tech as at the date of this Agreement or which are or have been developed independently of this Agreement by Telefónica Tech;
<b>Bribery Laws</b>	means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption;

<b>Business Day</b>	means any day which is not a Saturday, Sunday or public holiday in the UK;
<b>TELEFÓNICA TECH</b>	means the Telefónica Tech Group Company as detailed in the Quotation and/or Statement of Work
<b>TELEFÓNICA TECH GROUP Companies</b>	<p>means for the purposes of this Agreement:</p> <ul style="list-style-type: none"> <li>(i) Telefónica Tech UK Limited;</li> <li>(ii) Telefónica Tech Northern Ireland Limited;</li> <li>(iii) Telefónica Tech Ireland Limited;</li> </ul> <p>'Telefónica Tech Group Company' shall be interpreted accordingly;</p>
<b>Charges</b>	means the amounts and rates charged for the Specified Service as set out in the Quotation and/or Statement of Work;
<b>Control</b>	has the meaning given to it in section 1124 of the Corporation Tax Act 2010 OR means the beneficial ownership of more than fifty percent (50%) of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company;
<b>Confidential Information</b>	<p>means all confidential information (however recorded, preserved or disclosed) of a party or its Group Company including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) this Agreement;</li> <li>(b) any information that would be regarded as confidential by a reasonable business person relating to:           <ul style="list-style-type: none"> <li>(i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of the Disclosing Party's Group Company; and</li> <li>(ii) the operations, processes, product information, know-how, technical information, financial information, designs, trade secrets or software of the Disclosing Party or of the Disclosing Party's Group Company; and</li> </ul> </li> </ul>

	<p>(c) any information that is labelled as such;</p> <p>(d) any information, findings, data or analysis derived from Confidential Information;</p> <p>but not including any information that:</p> <p>(e) is or becomes generally available to the public other than as a result of its disclosure by the Recipient in breach of this agreement or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or</p> <p>(f) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or</p> <p>(g) the parties agree in writing is not confidential or may be disclosed; or</p> <p>(h) is independently developed by the receiving party, which independent development can be shown by written evidence; or</p> <p>(i) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.</p>
<b>Customer</b>	means the business or organisation as named in the Quotation and or Statement of Work;
<b>Customer Data</b>	means all data, information, and other materials in any form (including derivatives) relating to the Customer (and/or its customers) and which may be accessed, generated, collected, stored or transmitted by Telefónica Tech (or any Telefónica Tech contractor) in the course of the performance of any services;
<b>Customer Hardware</b>	means the existing hardware, networks and associated equipment owned by or licensed to the Customer which shall be linked to or accessed by or otherwise associated with the Specified Service;
<b>Customer Materials</b>	means any Customer software, Customer Data, Customer IPR, calculations, algorithms, methods, information and other materials created or supplied by the Customer;

<b>Customer Obligations</b>	means the general obligations set out in clause 8 and the additional specific obligations if any, as detailed in the Quotation and/or Statement of Work;
<b>Customer Software</b>	means the existing software owned by or licensed to the Customer which shall be linked into or accessed by or otherwise associated with the Specified Service;
<b>Customer Site</b>	means the Customer site(s) as listed in the Quotation and/or Statement of Work at which the Specified Service is to be performed;
<b>Data Protection Laws</b>	has the meaning given to it in the GDPR Appendix
<b>Data Protection Losses</b>	<p>means all liabilities, including all:</p> <p>(a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and</p> <p>(b) to the extent permitted by Applicable Law:</p> <p>(i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;</p> <p>(ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and</p> <p>(iii) the reasonable costs of compliance with investigations by a Supervisory Authority;</p>
<b>Disclosing Party</b>	means a party to this Agreement which discloses or makes available directly or indirectly Confidential Information;
<b>Documentation</b>	means the documents to be provided either by electronic and/or paper format specified by title and quantity in the Quotation and/or Statement of Work;

<b>Force Majeure Event</b>	means an event of the type specified in clause 17;
<b>Group Company</b>	means each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company and “Group Companies” shall be interpreted accordingly;
<b>Hardware</b>	means the hardware to be installed, as more particularly described in the Quotation and/or Statement of Work;
<b>IPR</b>	means any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions;
<b>Liability</b>	1.3 means, when capitalised, liability in or for breach of contract, negligence, misrepresentation, tortious claim, restitution, Data Protection Losses or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement. “Liable” shall be interpreted accordingly;
<b>Liability Provisions</b>	means the provisions set out in clause 12;
<b>Materials and Goods</b>	means all non-Product materials and goods used by Telefónica Tech in providing the Specified Service;

<b>Normal Working Hours</b>	means Monday – Friday, 9am – 5.30pm, excluding bank and public holidays in England & Wales;
<b>Pass-Through Service</b>	means a Warranty or such other service provided under an agreement between a Third Party Provider and the Customer (or such third party as shall be agreed in writing by Telefónica Tech);
<b>Payment Milestone</b>	has the meaning given to it in the Quotation and/or Statement of Work;
<b>Product</b>	means the Hardware and/or Software and/or Pass-Through Service (as the case may be);
<b>Quotation</b>	means the quotation or tender given by Telefónica Tech to the Customer for the Specified Service to which this Agreement relates;
<b>Recipient</b>	means a party to this agreement which receives or obtains directly or indirectly Confidential Information;
<b>Representatives</b>	<p>means, in relation to the Recipient:</p> <p>(a) its officers and employees and those of its Group Company that need to know the Confidential Information for the purpose of enabling the Recipient to comply with its obligations of this Agreement;</p> <p>(b) its professional advisers or consultants who are engaged to advise that party in connection with the Agreement;</p> <p>(c) its contractors and sub-contractors engaged by that party in connection with the Agreement; and</p> <p>(d) any other person to whom the Disclosing Party agrees in writing that Confidential Information may be disclosed.</p>
<b>Software</b>	means the operating system software to be installed, and/or software pre-installed on any supplied Hardware; and/or the software listed in the Quotation and/or Statement of Work;
<b>Specification</b>	means the specification of the requirements for the Product;

<b>Specified Service</b>	<p>means, where applicable:</p> <p>(a) the supply of the Product; and/or</p> <p>(b) the advising and designing of the installation thereto; and/or</p> <p>(c) the provision of information technology-related services;</p> <p>as may be provided for and described in the Quotation and/or Statement of Work.</p>
<b>Statement of Work</b>	<p>means the document provided to the Customer by Telefónica Tech detailing the Specified Service to which this Agreement relates;</p>
<b>Sub-Processor</b>	<p>means another Data Processor engaged by Telefónica Tech for carrying out processing activities in respect of the Protected Data on behalf of the Customer;</p>
<b>Third Party Provider</b>	<p>means the individual or organisation who has agreed to provide the services described in the Pass-Through Service;</p>
<b>Third Party Rights</b>	<p>means the rights and restrictions set out in clause 28;</p>
<b>Unlimited Liability Provisions</b>	<p>means clauses 12.5 and 12.6;</p>
<b>Variation</b>	<p>means the alteration or modification of the design, quality or quantity of products or services, and includes the addition, omission or substitution of any products or services and the alteration of the kind or standard of any of the products or services. "Vary" shall be interpreted accordingly;</p>
<b>Warranty</b>	<p>means a third-party support agreement, licence agreement, product warranty and/or care pack as further described in the Quotation and/or Statement of Work;</p>

1.4 In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

- 1.5 Unless the context otherwise so requires, references to any gender include all genders.
- 1.6 Headings in this Agreement are for convenience only and shall not affect the construction of this Agreement and its interpretation.
- 1.7 A reference to a 'party' means either Telefónica Tech or the Customer and includes that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.9 A reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.10 Words in the singular include the plural and vice versa.
- 1.11 Any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.
- 1.12 Any definitions within this Agreement shall apply to this Agreement, the Quotation and/or Statement of Work;
- 1.13 The definitions and rules of interpretations set out in this Agreement shall be supplemented by the definitions and rules of interpretation set out in the Quotation and/or Statement of Work;
- 1.14 Unless the context requires otherwise, reference to a 'clause' shall be reference to a provision of this Agreement and reference to a 'paragraph' shall be a reference to the Quotation and/or Statement of Work;
- 1.15 Save for the reference in clause 1.15 below, any reference to this Agreement shall be taken to be a reference to the distinct and separate contractual agreement which comprises of: the clauses contained herein, the Quotation and/or Statement of Work, and its respective schedules, appendices and annexes (if any).
- 1.16 In the event of a conflict between the clauses contained in this Agreement and the terms of the Quotation and/or Statement of Work, the clauses contained in this Agreement shall prevail, followed by the Statement of Work and then the Quotation.



## 2. The Quotation

- 2.1 Each Quotation and/or Statement of Work remains valid for thirty (30) calendar days from date of issue and may be withdrawn or amended by Telefónica Tech at any time prior to acceptance by the Customer.
- 2.2 Telefónica Tech reserves the right to withdraw or amend any Quotation following acceptance where a supplier or manufacturer to Telefónica Tech:
- 2.2.1 withdraws products or services; or
  - 2.2.2 increases the charges for the products or services; or
  - 2.2.3 varies specifications of the products or services.
- 2.3 All drawings, descriptive matter, specifications and advertising issued by Telefónica Tech and any descriptions or illustrations contained in Telefónica Tech's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of Products or the Specified Service and any other materials, goods and/or services described in them. They shall not form part of the Quotation and/or Statement of Work.

## 3. Application of Terms

- 3.1 The services and products supplied pursuant to this Agreement shall be to the exclusion of all other terms and conditions whatsoever. No terms or conditions endorsed upon, delivered with, or contained in any order, acknowledgement of order, specification or any other document will form part of this Agreement.
- 3.2 The written or oral acceptance of any quotation or statement of work by the Customer; or the authorisation by the Customer of the services or delivery of the products; or the commencement of the services; shall be deemed to be the formation and conclusion of a contract subject to this Agreement.

## 4. Product-Specific Addenda

- 4.1 In respect of certain Products or categories of Products, Telefónica Tech may require the Customer to agree to the terms of a product-specific addendum. The product-specific addendum shall apply only to those Products or categories of Products listed therein and may supplement or amend this Agreement in respect of the same.

## 5. Telefónica Tech Warranties

- 5.1 Telefónica Tech warrants that:
- 5.1.1 it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of Telefónica Tech;
  - 5.1.2 it owns or has obtained valid licences, consents, permissions and rights to enable it to comply with this Agreement and to use any of the IPR necessary for the fulfilment of all its obligations under this Agreement including for the Customer's use and receipt of goods and services, and Telefónica Tech shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- 5.2 The Customer acknowledges that Telefónica Tech acts as a reseller of the Products, Materials and Goods. Telefónica Tech shall assign to the Customer the benefit of any warranty, indemnity or guarantee given by the supplier or manufacturer of the same. The obligation to assign the benefit of such warranty, guarantee or indemnity shall (subject to the Unlimited Liability Provisions in the Agreement) be the only warranty given by Telefónica Tech in relation to the same.
- 5.3 In the event that the Customer purchases a Pass-Through Service, Telefónica Tech's obligation to procure the Pass-Through Service pursuant to clause 7.5 below shall (subject to the Unlimited Liability Provisions in the Agreement) be the only warranty (express or implied) given by Telefónica Tech in relation to the same.
- 5.4 Telefónica Tech warrants to the Customer that the Specified Service shall be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Specification and at the intervals and within the times referred to in the Quotation and/or Statement of Work.
- 5.5 If the Quotation and/or Statement of Work define specific deliverables, Telefónica Tech warrants those deliverables will conform materially to their written specifications for thirty (30) calendar days following delivery. If the Customer notifies Telefónica Tech of a non-conformity during the thirty (30) calendar day period Telefónica Tech will promptly remedy the impacted deliverables or refund to Customer the fees already paid for those deliverables and the Customer will return those deliverables to Telefónica Tech prior to receiving a refund.
- 5.6 Subject to clauses 5.1 to 5.5 above, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose (including but not

limited to section 14 of the Sale of Goods Act 1979), reasonable skill and care or ability to achieve a particular result are excluded from this Agreement to the fullest extent allowed by applicable law. The Customer agrees that such exclusion is reasonable given the obligations in clauses 5.1 to 5.5 above.

- 5.7 Save as expressly provided herein, all other warranties express or implied in relation to Products, Materials and Goods are hereby excluded.

## 6. Customer Warranties

- 6.1 The Customer warrants and represents that (and throughout the term of the Agreement, continues to warrant that):
- 6.1.1 it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to Telefónica Tech, 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 Customer software; and any hardware or software supplied by the Customer shall not cause Telefónica Tech to infringe the rights, including any IPR of any third party.
- 6.1.2 it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Customer.
- 6.1.3 it has the authority to grant any rights to be granted to Telefónica Tech under this Agreement, including any rights required for the provision of goods and services and otherwise in connection with this Agreement;

## 7. Telefónica Tech Obligations

- 7.1 Telefónica Tech shall:
- 7.1.1 comply with all Applicable Laws in the country in which Specified Services are to be performed;
- 7.1.2 provide services using reasonable skill and care;
- 7.1.3 ensure that all personnel and sub-contractors used by Telefónica Tech in the performance of such services are adequately skilled and experienced for the activities they are required to perform;
- 7.2 The obligation at clause 7.1.2 shall not apply to the extent of any non-conformance that is caused by the use by the Customer of a service contrary to

Telefónica Tech's instructions or by the Customer's breach of its own obligations under this Agreement.

- 7.3 Telefónica Tech shall provide the Specified Service to the Customer pursuant to this Agreement together with any Quotation and/or Statement of Work save that any Statement of Work described as a 'Flexible Resource Service' shall be subject to the terms of Telefónica Tech's Resources Agreement and not this Agreement.
- 7.4 The Products shall be delivered by Telefónica Tech to the address for the delivery as may be set out in the Quotation; set out in the Customer's purchase order; or otherwise specified by the Customer. The Products shall be deemed delivered by Telefónica Tech on arrival of the Products at that address.
- 7.5 Where the Customer purchases a Pass-Through Service, Telefónica Tech shall procure the right for the Customer (or such third party as shall be agreed in writing by Telefónica Tech) to enter into a contract with the Third Party Provider for the Pass-Through Service.
- 7.6 Nothing in this clause 7 shall render Telefónica Tech liable for loss or damage arising out of:
- 7.6.1 the Customer's failure to comply with its Customer Obligations;
- 7.6.2 the Customer's failure to provide Telefónica Tech with any or any adequate instructions for performance or delivery of the Specified Service;
- 7.6.3 the Customer's failure to prepare the Customer Site in accordance with the Quotation and/or Statement of Work;
- 7.6.4 delay due to a Force Majeure Event.
- 7.7 Telefónica Tech may at any time without notifying the Customer make any changes to the Specified Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.
- 7.8 In the event that:
- 7.8.1 the Customer fails to comply with its Customer Obligations; or
- 7.8.2 any Assumptions prove to be unfounded; then Telefónica Tech shall be entitled to:
- 7.8.3 a reasonable extension of time in respect of any services delayed as a result of one or more of the events in clauses 7.8.1 or 7.8.2; and

- 7.8.4 such reasonable additional costs incurred by Telefónica Tech as a result of one or more of the events in clauses 7.8.1 or 7.8.2.
- 7.9 Unless expressly specified otherwise, the Specified Service shall be effected during Normal Working Hours.
- 7.10 Unless expressly specified otherwise, time shall not be of the essence to Telefónica Tech's obligations under this Agreement.

## 8. Customer Obligations

- 8.1 The Customer shall:
- 8.1.1 comply with the terms of this Agreement and all Applicable Laws in a timely and efficient manner, and in the event of any delays in the Customer's provision of such assistance, Telefónica Tech may adjust any timetable or delivery schedule set out in this Agreement as is reasonably necessary;
- 8.1.2 provide Telefónica Tech with all necessary co-operation in relation to this Agreement and all necessary access to such information and premises as may be required by Telefónica Tech in order to supply any goods or services hereunder;
- 8.1.3 provide assistance through its personnel as may be reasonably required by Telefónica Tech from time to time;
- 8.1.4 supply Telefónica Tech, at its own expense, with all necessary Documentation or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable Telefónica Tech to provide the Specified Service in accordance with the Quotation and/or Statement of Work.
- 8.1.5 retain duplicate copies, at its own expense, of all Customer Materials and associated documents and materials and insure against the accidental loss or damage to the same. The Customer is responsible for maintaining full security and back-up procedures. Telefónica Tech shall have no Liability for any such loss or damage, however caused.
- 8.2 The Customer shall not be entitled to use any Software until and unless it has agreed to be bound by the End User Licence Agreement ("EULA") or such other terms as the licensor of the Software may impose from time to time. Such EULA or terms shall be enforceable by the licensor.

- 8.3 The Customer shall permit (such permission not to be unreasonably withheld or delayed) employees, agents, sub-contractors and associates of Telefónica Tech on reasonable notice during Normal Working Hours (unless otherwise agreed) to:
- 8.3.1 access such of the Customer Materials, Customer Hardware and Customer Software as is necessary to enable Telefónica Tech to provide the Specified Service; and
  - 8.3.2 to enter the Customer Site and any other offices reasonably necessary for the purpose of performing the Specified Service.
- 8.4 The Customer shall comply with its obligations set out in the Quotation and/or Statement of Work.
- 8.5 Where a Statement of Work requires the acceptance by the Customer of any 'deliverable', 'milestone', 'acceptance test', 'project' or any other outcome specified therein, such acceptance shall be given promptly and shall not be unreasonably withheld.
- 8.6 Where Telefónica Tech has procured a Pass-Through Service:
- 8.6.1 the Customer shall enter into a Pass-Through Service agreement with the Third Party Provider on the terms set out by the Third Party Provider;
  - 8.6.2 the Customer agrees that Telefónica Tech may register the Customer (or such other third party as Telefónica Tech shall agree in writing) as the end user or recipient of the Pass-Through Service;
  - 8.6.3 In the event that the Customer intends that some third party should be registered as the recipient of services under any Pass-Through Service, the Customer shall inform Telefónica Tech in writing at or before the date of this Agreement.

## 9. Charges and Payment

- 9.1 The Customer shall pay to Telefónica Tech:
- 9.1.1 the charges and fees set out in the relevant Quotation and/or Statement of Work in the manner set out therein;
  - 9.1.2 any additional sums which, at Telefónica Tech's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Customer Materials or any other cause attributable to the Customer.
- 9.2 All charges and fees are exclusive of any Value Added Tax or other applicable sales taxes, for which the Customer shall be additionally liable at the applicable

rate from time to time. In the case of supply to a Customer outside the UK the Customer shall be responsible for all import levies, customs duties or other similar taxes of whatever nature.

- 9.3 Telefónica Tech shall be entitled to invoice the Customer:
- 9.3.1 upon delivery of Products. Where the Customer has requested Telefónica Tech to secure promotional pricing for Products by placing an order at a particular time, Telefónica Tech shall be entitled to invoice for those Products on the date of this Agreement;
- 9.3.2 upon acceptance of consultancy and other information technology-related services, or at the end of each project stage, or the end of each month in which any services are provided, or at such other times as may be specified in the Quotation and/or Statement of Work where Payment Milestones have not been otherwise agreed.
- 9.4 Invoices shall be payable in Pounds Sterling. Telefónica Tech's charges and fees payable shall be paid by the Customer (together with any applicable Value Added Tax or sales taxes) within thirty (30) calendar days of the date of Telefónica Tech's invoice unless otherwise agreed in the relevant Quotation and/or Statement of Work.
- 9.5 The time stipulated for payment shall be of the essence of this Agreement and failure to pay the charges or fees within the period specified shall, in the absence of a written explanation from the Customer that has been duly accepted by Telefónica Tech, render the Customer in material breach of this Agreement.
- 9.6 If Telefónica Tech has not received payment within seven (7) calendar days after the due date, and without prejudice to any other rights and remedies of Telefónica Tech:
- 9.6.1 shall be under no obligation to provide any services while the invoice(s) concerned remain unpaid;
- 9.6.2 shall be entitled to revoke or suspend any third-party licences granted under this Agreement; and
- 9.6.3 may charge interest on any outstanding amount due from the Customer at the rate of four percent (4%) above the base rate of the Bank of England from time to time in force, after as well as before judgment on any amount due from the Customer to Telefónica Tech from the date due for payment until the outstanding payment is received in full.

- 9.7 If payment of any invoice is not otherwise due it shall become automatically due immediately on the commencement of any act or proceeding in which the Customer's solvency is involved.
- 9.8 No payment shall be deemed to have been received until Telefónica Tech has received cleared funds.
- 9.9 All charges and fees for a relevant service shall become due immediately upon termination of that service (save where the termination arises as a result of Telefónica Tech's breach) despite any other provision.
- 9.10 Telefónica Tech may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.
- 9.11 Variations or additions to the Specified Service shall be charged on a time and material basis at Telefónica Tech's standard rates from time to time unless the subject of a separate quotation and/or statement of work is agreed and accepted by the Customer.

## 10. Delivery, Title and Risk

- 10.1 Risk in the Products and/or Materials and Goods shall pass to the Customer upon delivery as set out in clause 7.4.
- 10.2 The Products and/or Materials and Goods shall remain the sole and absolute property of Telefónica Tech as legal and equitable owner until such time as the Customer has paid to Telefónica Tech the full amount of the price of the Products and/or Materials and Goods together with the full price of any other Products and/or Materials and Goods or any other products or goods which are the subject of any other contract with Telefónica Tech.
- 10.3 Following delivery (as set out in clause 7.4) and until such time as the Customer becomes the owner of the Products and/or Materials and Goods (and notwithstanding that the Products and/or Materials and Goods remain the sole and absolute property of Telefónica Tech) the Customer shall:
- 10.3.1 store them on its premises in a manner which makes them readily identifiable as the Products and/or Materials and Goods of Telefónica Tech;
- 10.3.2 assume the risk in the Products and/or Materials and Goods and insure the Products and/or Materials and Goods for their full market value.
- 10.4 The Customer acknowledges that it is in possession of the Products and/or Materials and Goods solely as a fiduciary for Telefónica Tech until the Customer



becomes the owner of the Products and/or Materials and Goods. In the event that the Customer sells the Products and/or Materials and Goods, the Customer acknowledges that the entire proceeds of sale thereof are held in trust for Telefónica Tech and shall not be mixed with other monies or paid into any overdrawn bank account and shall be at all times identifiable as Telefónica Tech's monies.

- 10.5 Until such payment is received in full Telefónica Tech may, without prejudice to any of its rights:
- 10.5.1 at any time with good cause require the Customer to deliver up the Products and/or Materials and Goods to Telefónica Tech and, if the Customer fails to do so forthwith;
- 10.5.2 recover or resell any of the Products and/or Materials and Goods and may enter upon the Customer Site or vehicle by its servants or agents for that purpose. The Customer hereby expressly grants Telefónica Tech an irrevocable license to enter upon the Customer Site or vehicles or any of them at any time to exercise such rights or any other property where the Products and/or Materials and Goods are stored and for the purpose of repossessing such Products and/or Materials and Goods.
- 10.6 In the event that the Customer uses the Products and/or Materials and Goods in some manufacturing process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing process as relates to the Products and/or Materials and Goods in trust for Telefónica Tech and shall keep such proceeds in a separate account until the Liability of Telefónica Tech has been discharged. Such part of the proceeds shall equal the amount owing by the Customer to Telefónica Tech at the time of receipt of such proceeds.
- 10.7 Where the Customer is required to keep the proceeds of a resale or manufacturing process of the Products and/or Materials and Goods in a separate account in accordance with clauses 10.4 or 10.6 above, then the Customer shall be obliged to keep a separate record of these proceeds and shall allow Telefónica Tech to inspect these records upon a reasonable request by Telefónica Tech to do so.
- 10.8 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products and/or Materials and Goods which remain the property of Telefónica Tech, but if the Customer does so all sums owing by the Customer to Telefónica Tech shall (without limiting any other right or remedy of Telefónica Tech) forthwith become due and payable.

## 11. Indemnities

- 11.1 The Customer shall indemnify and keep Telefónica Tech indemnified from and against any losses, damages, liability, costs (including legal fees) and expenses suffered or incurred by, awarded against or agreed to be paid by, Telefónica Tech as a result of or in connection with any action, demand or claim that the proper use or possession of any Customer Materials, infringes the IPR of any third party.
- 11.2 The Customer shall indemnify and keep Telefónica Tech indemnified in respect of all Data Protection Losses suffered or incurred by, awarded against or agreed to be paid by, Telefónica Tech and any Sub-Processor arising from or in connection with any:
- 11.2.1 non-compliance by the Customer with the Data Protection Laws;
  - 11.2.2 processing carried out by Telefónica Tech or any Sub-Processor pursuant to any Customer instruction that infringes any Data Protection Laws; or
  - 11.2.3 breach by the Customer of any of its obligations under clause 16.
- 11.3 The Customer shall indemnify and keep Telefónica Tech indemnified from and against any losses, damages, liability, costs (including legal fees) and expenses suffered or incurred by, awarded against or agreed to be paid by, Telefónica Tech as a result of or in connection with any breach of clause 14 hereof.
- 11.4 The indemnities in sub-clauses 11.1 to 11.3 are subject to the following conditions:
- 11.4.1 the indemnified party promptly notifies the indemnifier in writing of the action or claim;
  - 11.4.2 the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
  - 11.4.3 the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
  - 11.4.4 the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.
- 11.5 The indemnities in clauses 11.1 to 11.3 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

## 12. Limitation of Liability

- 12.1 The extent of Telefónica Tech's Liability under or in connection with the Agreement shall be as set out in this clause 12.
- 12.2 Subject to clauses 12.3, 12.5 and 12.6, Telefónica Tech's total aggregate Liability shall not exceed the applicable financial limit for each category of liability set out below:
- 12.2.1 in respect of a Product, such Liability shall not exceed the maximum of one hundred and twenty five percent (125%) of the Charges paid or payable to Telefónica Tech in respect of that Product;
- 12.2.2 in respect of any services (including, without limitation, the Specified Service), such Liability shall not exceed the maximum of one hundred and twenty five percent (125%) of the Charges paid or payable to Telefónica Tech during the twelve (12) months immediately preceding the act or omission giving rise to the Liability;
- 12.2.3 in respect of all other Liability, howsoever arising, the maximum of 125% of the relevant fees paid or payable for the relevant product or service in respect of which a claim is made during the 12 months immediately preceding the act or omission giving rise to the Liability.
- 12.3 Subject to clauses 12.5 and 12.6, Telefónica Tech shall not be Liable for any of the following:
- 12.3.1 any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non- arrival, or any other fault of the Customer;
- 12.3.2 any use of any service or product supplied by Telefónica Tech under this Agreement for any purpose for which the service or product is not designed;
- 12.3.3 any Data Protection Losses not directly resulting from Telefónica Tech's breach of clause 16;
- 12.3.4 any Data Protection Losses to the extent that they are contributed to or caused by any breach of this Agreement by the Customer;
- 12.3.5 loss of actual or anticipated profits;
- 12.3.6 any damages relating to the procurement by the Customer of any substitute goods or services;

- 12.3.7 loss of business;
- 12.3.8 loss of revenue or the use of money;
- 12.3.9 loss of data (and/or undertaking the restoration of data or software restoration);
- 12.3.10 loss of use;
- 12.3.11 loss of production;
- 12.3.12 loss of contracts;
- 12.3.13 loss of opportunity;
- 12.3.14 loss of savings, discount or rebate (whether actual or anticipated);
- 12.3.15 harm to reputation or loss of goodwill;
- 12.3.16 any special, indirect or consequential loss;

and such Liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, clauses 12.3.1 to 12.3.15 above shall apply whether such damage or loss is direct, indirect, consequential or otherwise.

- 12.4 Subject to the Unlimited Liability Provisions in this Agreement, Telefónica Tech shall not be liable for any breach of the terms of a Pass-Through Service by the Third Party Provider unless that breach is caused by Telefónica Tech (and then subject to the limits and exclusions of Liability set out in this clause 12).
- 12.5 Notwithstanding any other provision of this Agreement, the Liability of the parties shall not be excluded or limited in any way in respect of the following:
  - 12.5.1 death or personal injury caused by negligence (as such term is defined in the Unfair Contract Terms Act 1977);
  - 12.5.2 fraud or fraudulent misrepresentation;
  - 12.5.3 any breach of undertaking as to title, quiet possession and freedom of encumbrance implied by law;
  - 12.5.4 any other losses which cannot be excluded or limited by Applicable Law.
- 12.6 Telefónica Tech does not exclude, but does limit in accordance with clause 12.2, Liability for any fundamental misrepresentation including a misrepresentation as to a matter fundamental to its ability to perform its obligations under this Agreement.

## 13. Anti-Bribery

- 13.1 For the purposes of this clause 13 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 13.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 13.2.1 all of that party's personnel;
  - 13.2.2 all others associated with that party; and
  - 13.2.3 all of that party's subcontractors;  
  
involved in performing the Agreement so comply.
- 13.3 Without limitation to clause 13.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 13.4 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 13.

## 14. Confidential Information

- 14.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall:
- 14.1.1 not use or exploit the Confidential Information in any way except for the purpose of complying with its obligations under this Agreement;
  - 14.1.2 not directly or indirectly disclose or make the Confidential Information available in whole or in part to any third party, except as expressly permitted by this Agreement;
  - 14.1.3 not copy, scan, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the purpose of complying with its obligations

under this Agreement (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);

- 14.1.4 apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use;
- 14.2 The Recipient may disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know this Confidential Information for the purpose of enabling the Recipient to comply with its obligations under this Agreement, provided that:
  - 14.2.1 it informs its Representatives of the confidential nature of the Confidential Information before disclosure;
  - 14.2.2 it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with this agreement as if they were the Recipient and, if the Disclosing Party so requests, procure that any relevant Representative enters into a confidentiality agreement with the Disclosing Party on terms equivalent to those contained in this agreement; and
  - 14.2.3 it keeps a written record of these Representatives, and it shall at all times:
    - 14.2.3.1 take all necessary precautions to ensure that the provisions of this clause 14 are enforced; and
    - 14.2.3.2 be liable for the failure of any Representative to comply with the terms of this agreement and for the actions or omissions of the Representative as if they were the failure, actions or omissions of the Recipient.
- 14.3 The Recipient may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 14.3, it takes into account the reasonable requests of the Disclosing Party in relation to the content of this disclosure.
- 14.4 Unless expressly provided by this Agreement, all Confidential Information shall remain the property of the Disclosing Party.
- 14.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

14.6 This clause 14 shall survive termination of this Agreement, however arising.

## 15. Intellectual Property Rights

15.1 Except as expressly stated in this clause 15 or in the Quotation and/or Statement of Work hereto no IPR of either party are transferred or licensed as a result of this Agreement.

15.2 All Background IPR and IPR in any products, services and deliverables shall belong to and vest in Telefónica Tech or its licensors.

15.3 Without limitation to clause 15.2:

15.3.1 Telefónica Tech grants the Customer a non-exclusive, non-transferable and royalty-free licence to use for its own benefit and to use in the Customer's business to enable the Customer to service its own customers:

- a) Background IPR; and
- b) IPR in all materials connected with any services or deliverables and in any material developed or produced in connection with this Agreement by Telefónica Tech, its officers, employees, subcontractors or agents;

to the extent necessary to enable the Customer to make use of any products, services or deliverables and otherwise perform its obligations under this Agreement;

15.3.2 the Customer grants Telefónica Tech a non-exclusive, non-transferable and royalty-free licence to use the Customer Materials (and to permit any Telefónica Tech subcontractor to use the same subject to the same restrictions as under this Agreement) to the extent necessary to enable Telefónica Tech to provide any products, services, and/or deliverables and otherwise perform its obligations under this Agreement.

15.4 The Customer shall execute such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this clause 15.

## 16. Data Protection

16.1 The parties agree to the terms of the GDPR Schedule attached hereto and this Agreement shall, for the purposes thereof, be a 'Relevant Agreement'.

- 16.2 Any notice or request by the Customer pursuant to the GDPR Schedule shall be directed in accordance with clause 27 below.

## 17. Force Majeure

- 17.1 Neither party shall have any liability to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control including, without limitation:

17.1.1 strikes, lock-outs or other industrial disputes (whether involving the workforce of Telefónica Tech or any other party);

17.1.2 failure of a utility service or transport or telecommunications network;

17.1.3 act of God, war, riot, civil commotion;

17.1.4 malicious damage;

17.1.5 compliance with any law or governmental order, rule, regulation or direction;

17.1.6 accident;

17.1.7 breakdown of plant or machinery;

17.1.8 adverse weather conditions affecting delivery of goods and services including but not limited to fire; flood; storm;

17.1.9 shortage of goods or an increase in price of goods to Telefónica Tech; or

17.1.10 default of suppliers or sub-contractors;

PROVIDED THAT the other party is notified of such an event and its expected duration and takes all reasonable steps to resume performance of its obligations.

- 17.2 Clause 17.1.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.

- 17.3 If and when the period of such incapacity exceeds sixty (60) calendar days then either party will be entitled to terminate this Agreement by notice in writing.



## 18. Termination

- 18.1 Either party may terminate the Agreement at any time by giving notice in writing to the other if:
- 18.1.1 the other party commits a material breach of the Agreement and such breach is not remediable; or
  - 18.1.2 the other party commits a material breach of the Agreement which is not remedied within thirty (30) calendar days of receiving written notice of such breach;
- 18.2 Without prejudice to any other right that Telefónica Tech may have to suspend performance of its obligations, Telefónica Tech may terminate the Agreement at any time by giving notice in writing to the Customer if:
- 18.2.1 the Customer has failed to pay any amount due under the Agreement on the due date and such amount remains unpaid within thirty (30) calendar days after Telefónica Tech has given notification that the payment is overdue; or
  - 18.2.2 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Agreement or the Schedule or receive any benefit to which it is entitled;
  - 18.2.3 the Customer breaches clauses 6, 8, 9, 13 or 14;
- 18.3 Telefónica Tech may terminate the Agreement at any time by giving notice in writing to the Customer if the Customer:
- 18.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 18.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if Telefónica Tech reasonably believes that to be the case;
  - 18.3.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 18.3.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 18.3.5 has a resolution passed for its winding up;
  - 18.3.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;

- 18.3.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven (7) calendar days of that procedure being commenced;
- 18.3.8 has a freezing order made against it;
- 18.3.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- 18.3.10 is subject to any events or circumstances analogous to those in clauses 18.3.1 to 18.3.9 in any jurisdiction;
- 18.3.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 18.3.1 to 18.3.10 above including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 18.4 Telefónica Tech may terminate the Agreement at any time by giving not less than twenty eight (28) calendar days' notice in writing to the Customer if the Customer undergoes a change of Control.
- 18.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle Telefónica Tech to terminate the Agreement under this clause 18, it shall immediately notify Telefónica Tech in writing.
- 18.6 For the avoidance of doubt, the termination of this Agreement shall not cause the termination of any other separate agreement between Telefónica Tech and the Customer even if that agreement is made on the same terms as those contained herein (including, but without limitation, a separate agreement to which another Quotation and/or Statement of Work applies).
- 18.7 The following shall not be affected or prejudiced by termination, howsoever arising:
- 18.7.1 the accrued rights and liabilities of the parties as at termination;
- 18.7.2 the continuation of any provision implicitly surviving termination; 18.7.3 clauses 1, 6, 9, 12, 13, 14, 15, 16, 23, 24, 25, 26, 27, 28, 29, and 30.

## 19. Assignment and Delegation

- 19.1 Telefónica Tech may not assign this Agreement, in whole or in part, without the Customer's prior written consent (such consent not to be unreasonably withheld

or delayed) unless such assignment is to one of Telefónica Tech's Group Companies.

- 19.2 Telefónica Tech may subcontract any of its obligations or responsibilities under this Agreement. Performance by such subcontractors shall be deemed to be performance by Telefónica Tech.
- 19.3 The Customer may not assign, subcontract or encumber any right or obligation under the Agreement, in whole or in part, without Telefónica Tech's prior written consent (such consent not to be unreasonably withheld or delayed).

## 20. Severance

- 20.1 If at any time any one or more clause, sub-clause, paragraph, subparagraph or any other part of this Agreement is held to be, or becomes, void or otherwise unenforceable for any reason under any Applicable Law the same shall be deemed omitted and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.
- 20.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted or modified, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable and to give effect to the commercial intention of the parties.

## 21. Waiver

- 21.1 No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right.
- 21.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. No waiver by either party of any breach of this Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

## 22. Variation

- 22.1 No Variation to this Agreement shall be of any effect unless there is agreement between the parties and the Variation is made in writing and signed by both parties.
- 22.2 If either party wishes to Vary any product or service provided under this Agreement it shall submit details of the requested change to the other in writing.
- 22.3 If the Customer requests a Variation, Telefónica Tech shall (if in the normal course of its business it is able to implement the change), within a reasonable time, provide a written estimate to the Customer of:
- 22.3.1 the likely time required to implement the Variation;
  - 22.3.2 any variations to the Charges arising from the Variation; and
  - 22.3.3 any other impact of the change on the terms of this Agreement.
- 22.4 If Telefónica Tech requests a Variation:
- 22.4.1 the Customer shall not unreasonably withhold or delay consent to it provided always that such change does not require any other changes to the terms and conditions of this Agreement; or adversely affect the provision of any services or products; or reduce the specification, capability, functionality or performance of the products or services; or increase any fees payable hereunder.
  - 22.4.2 the Customer shall not unreasonably withhold, delay or condition its agreement to any Variation requested by Telefónica Tech in order to ensure Telefónica Tech (and each Sub- Processor) can comply with Data Protection Laws.

## 23. Set-Off

- 23.1 Neither Telefónica Tech nor the Customer is entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under this Agreement or any other agreement at any time.

## 24. Non-Solicitation

- 24.1 The Customer undertakes that it will not during or for a period of twelve (12) months after the termination of this Agreement solicit or entice away or endeavour to solicit or entice away from Telefónica Tech any employee, contractor, agent or

consultant who has worked under this Agreement without the written consent of Telefónica Tech.

- 24.2 Notwithstanding clause 24.1, the Customer may employ or engage any person mentioned therein who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by the other party or via an advertisement placed publicly by the other party (either in the press, social media, online or in trade and industry publications).

## 25. Dispute Resolution

- 25.1 If there is a disagreement in relation to this Agreement, either party may invoke the dispute resolution procedure by referring the matter to the director of the relevant business unit (or their appointed delegate) who shall meet or participate in a conference call to try to resolve the matter. If the matter is not resolved at that level within twenty (20) Business Days of the authorised representatives having met or participated in a conference call, then the matter shall be referred by either party to the Managing Directors (or equivalent level personnel) of the parties (or their appointed delegate) who shall meet to try and resolve the matter within twenty (20) Business Days of referral. If any such meeting fails to result in a settlement within twenty (20) Business Days of the meeting (or if both parties are unable to attend a meeting within such period), then the matter may be referred to the courts.
- 25.2 The parties shall not refer any dispute to the courts unless and until the dispute resolution procedures of this clause 25 have been followed and the deadline for settlement under this clause 25 has expired save where it is necessary to do so for the purposes of applying for interim relief.
- 25.3 For the avoidance of doubt, the parties' obligations under this Agreement shall not be affected as a result of any matter being dealt with under the dispute resolution procedure set out in this clause 25.
- 25.4 Nothing in this clause 25 shall prevent either party applying to the courts for injunctive or other interim relief.

## 26. Entire Agreement

- 26.1 This Agreement, and any documents referred to in it, constitutes the entire agreement and understanding between the parties and supersedes any previous or contemporaneous agreement or understanding between them relating to the

subject matter hereof. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

- 26.2 The Customer acknowledges and agrees that no representations were made prior to entry into this Agreement.
- 26.3 Notwithstanding the same, if any such representations are found to have been made (and subject to clauses 12.5 and 12.6), the Customer does not rely on, and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person unless such representation is expressly agreed in writing and signed by an authorized representative of Telefónica Tech.

## 27. Notices

- 27.1 A notice required or permitted to be given by either party to the other under this Agreement shall be in writing, delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party and addressed:

27.1.1 in the case of the Customer to its registered office or principal place of business;

27.1.2 in the case of Telefónica Tech, to:

Legal Department  
Telefónica Tech  
East House  
Newpound Common  
Wisborough Green  
West Sussex  
RH14 0AZ

Or where a notice is permitted by e-mail, to: [legal@telefonicatech.uk](mailto:legal@telefonicatech.uk)

or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

- 27.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Normal Working Hours, at the start of Normal Working Hours on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

## 28. Third Party Rights

- 28.1 Except as provided for in clause 28.2 below, this Agreement does not confer any rights on any person or party (other than the parties to this Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 28.2 Any Group Company of Telefónica Tech shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Agreement. The consent of any such Group Company is not required in order to rescind, waive, settle or vary this Agreement or any provisions of it.

## 29. No Partnership or Agency

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

## 30. Governing Law and Jurisdiction

- 30.1 This Agreement and any other contract between the parties to which this Agreement relates and any other dispute or claim arising out of each of them shall be governed by and construed exclusively in accordance with the laws of England and Wales.
- 30.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 30.3 Telefónica Tech may issue proceedings (whether concurrently or not with proceedings referred to in clause 30.2) against the Customer in the location to which any goods are to be delivered to the extent permitted by the law applicable in that jurisdiction.
- 30.4 To the extent permitted by law:
- 30.4.1 the Convention on the International Sale of Goods 1980 and all international and domestic legislative (or other) implementations of that Convention; and

30.4.2 the Uniform Laws on International Sales Act 1967, will not apply in relation to this Agreement.

## GDPR Schedule

<b>“Applicable Law”</b>	Means European Union law in so far as it applies to Telefónica Tech; and the laws of England & Wales;
<b>“Customer”</b>	Means the company addressee of the letter to which this GDPR Schedule is attached with whom Telefónica Tech has entered into a Relevant Agreement.
<b>“Data Controller”</b>	shall have the meaning as set out in the Data Protection Laws;
<b>“Data Processor”</b>	shall have the meaning as set out in the Data Protection Laws;
<b>“Data Protection Laws”</b>	<p>means as applicable and binding on the Customer, Telefónica Tech and/or the services:</p> <p>(a) in the United Kingdom:</p> <p>(i) prior to the United Kingdom’s exit from the European Union, the GDPR, the Data Protection Act 2018 and/or any corresponding or equivalent national laws or regulations; and</p> <p>(ii) following the United Kingdom’s exit from the European Union the Data Protection Act 2018 and any national laws or regulations amending, replacing or superseding the GDPR;</p> <p>(b) in member states of the European Union: the GDPR and all relevant member state laws or regulations giving effect to or corresponding with any of them; and</p>



	(c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Laws from time to time;
<b>“Data Protection Losses”</b>	<p>means all liabilities, including all:</p> <p>(a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and</p> <p>(b) to the extent permitted by Applicable Law:</p> <p>(i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;</p> <p>(ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and</p> <p>(iii) the reasonable costs of compliance with investigations by a Supervisory Authority;</p>
<b>“Data Subject”</b>	shall have the meaning as set out in the Data Protection Laws;
<b>“Data Subject Request”</b>	means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
<b>“GDPR”</b>	means the General Data Protection Regulation (EU) 2016/679;
<b>“GDPR Schedule”</b>	Means this supplemental Schedule relating to the implementation of GDPR;
<b>“Telefónica Tech”</b>	Means the Telefónica Group Company with whom the Customer has a Relevant Agreement;
<b>“Telefónica Group Companies”</b>	<p>Means, at the date hereof:</p> <p>(i) Telefónica Tech UK Limited;</p> <p>(ii) Telefónica Tech Northern Ireland Limited;</p>

	<p>(iii) Telefónica Tech Ireland Limited;</p> <p>(iv) each and any subsidiary or holding company from time to time of the companies listed in (i) to (iii) above, and each and any subsidiary from time to time of a holding company of that company.</p> <p>“Telefónica Group Company” shall be interpreted accordingly;</p>
<b>“Personal Data”</b>	Shall have the meaning as set out in the Data Protection Laws;
<b>“Personal Data Breach”</b>	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
<b>“processing”</b>	When used in clause 1 below has the meanings given to that term in Article 4(2) of the GDPR (and related terms such as ‘process’ and ‘processes’ have corresponding meanings);
<b>“Protected Data”</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of Telefónica Tech’s obligations under the Relevant Agreement;
<b>“Relevant Agreement”</b>	Means the agreement(s) between Telefónica Tech and the Customer under which Telefónica Tech processes Protected Data;
<b>“Specified E-Mail Address”</b>	Means the email address set out below by the Customer or, if the Customer does not provide an email address, any email address known to Telefónica Tech which Telefónica Tech believes is suitable for the types of notice set out herein;
<b>“Sub-Processor”</b>	means another Data Processor engaged by Telefónica Tech for carrying out processing activities in respect of the Protected Data on behalf of the Customer;

<b>“Supervisory Authority”</b>	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws;
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## 1. Data Protection

- 1.1 This GDPR Schedule shall, from the date of last signature:
  - 1.1.1 Become binding on the Customer and Telefónica Tech;
  - 1.1.2 Replace any existing provisions relating to data protection or personal data in the Relevant Agreement.
- 1.2 The parties agree that this clause 1 applies where Telefónica Tech carries out processing (As defined in Article 4(2)) of the Protected Data. For such purposes, Telefónica Tech shall be a ‘Data Processor’.
- 1.3 Telefónica Tech shall (and shall procure that any personnel involved in the provision of services under the Relevant Agreement) comply with any notification requirements under the Data Protection Laws and other relevant legislation.
- 1.4 Both parties will duly observe all their obligations under the Data Protection Laws and other relevant legislation, which arise in connection with the Relevant Agreement.
- 1.5 The parties agree that Telefónica Tech shall process Personal Data as follows:
  - 1.5.1 Subject matter: The provision of IT goods and services under the Relevant Agreement;
  - 1.5.2 Duration: so long as the Relevant Agreement remains extant;
  - 1.5.3 Nature and purpose of processing: the collection, organisation, structuring, storage, adaptation and alteration and/or use of data for the purpose of Telefónica Tech fulfilling its obligations under the Relevant Agreement;
  - 1.5.4 Type of Personal Data to be processed: (i) names; email addresses; telephone numbers; job titles; business addresses; and (ii) any other data provided by the Customer for the purpose of transmission, storage and/or analysis.

- 1.5.5 Categories of Data Subject: (i) individuals permitted or required by the Customer to make use of the services under the Relevant Agreement, to communicate with Telefónica Tech in relation to the Relevant Agreement and/or to administer the Relevant Agreement; (ii) details of individuals contained within data that the Customer provides to Telefónica Tech for the purposes of transmission, storage and/or analysis.
- 1.6 The Customer warrants, represents and undertakes, that:
- 1.6.1 all data sourced by the Customer for use in connection with the Relevant Agreement, prior to such data being provided to or accessed by Telefónica Tech for the performance of its obligations under the Relevant Agreement, shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Customer providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;
- 1.6.2 all instructions given by it to Telefónica Tech in respect of Personal Data shall at all times be in accordance with Data Protection Laws;
- 1.6.3 it is satisfied that:
- a. Telefónica Tech's processing operations are suitable for the purposes for which the Customer proposes to use services under the Relevant Agreement and engage Telefónica Tech to process the Protected Data; and
  - b. Telefónica Tech has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws.
- 1.7 Telefónica Tech shall not engage a Sub-Processor without prior specific or general written authorisation of the Customer. In the case of general written authorisation, Telefónica Tech shall inform the Customer of any intended changes concerning the addition or replacement of other Sub-Processors, thereby giving the Customer the opportunity to object to such changes.
- 1.8 A list of Telefónica Tech's current Sub-Processors is available on Telefónica Tech's website at [www.telefonicatech.uk](http://www.telefonicatech.uk) (or at such alternative URL as Telefónica Tech shall notify the Customer of). The Customer hereby consents to the use of the Sub-Processors listed therein at the date of the Relevant Agreement.
- 1.9 Telefónica Tech may add to or replace current Sub-Processors from time to time by updating the list at clause 1.8. Prior to adding or replacing Sub-Processors, Telefónica Tech shall notify the Customer via the Specified E-Mail Address. If the

Customer objects to the addition or replacement, it shall notify Telefónica Tech of such objection within 7 days of the date that the notification was sent to the Specified Email Address in the manner set out in that notification and Telefónica Tech shall determine whether to:

- 1.9.1 reverse the addition or replacement in respect of the Relevant Agreement; or
- 1.9.2 Terminate the Relevant Agreement forthwith in whole or in part.
- 1.10 Without prejudice to the generality of clause 1.1, in respect of Protected Data disclosed to Telefónica Tech in connection with the Relevant Agreement (and whether disclosed by the Customer, data subjects or otherwise), Telefónica Tech shall ensure that it:
  - 1.10.1 only processes the Protected Data on documented instructions from the Customer, including with regard to transfers of Protected Data to a third country or an international organisation unless required to do so by Applicable Law to which Telefónica Tech is subject;
  - 1.10.2 if Applicable Law requires it to process Protected Data other than in accordance with the Customer's instructions, shall notify the Customer of any such legal requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest);
  - 1.10.3 shall use reasonable endeavours to consult the Customer before making any disclosure of Protected Data required by Applicable Law or by a law enforcement authority (unless notification or consultation is forbidden by Applicable Law);
  - 1.10.4 ensures that the persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - 1.10.5 takes all measures required pursuant to Article 32 of the GDPR;
  - 1.10.6 respects the conditions referred to in Article 28(2) and 28(4) of the GDPR for engaging a Sub-Processor;
  - 1.10.7 taking into account the nature of the processing, assists the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR;
  - 1.10.8 assists the Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and information available to Telefónica Tech;

- 1.10.9 immediately inform the Customer if, in its opinion, an instruction infringes the GDPR or other relevant Union or member state data protection provisions PROVIDED THAT:
- a. this shall be without prejudice to clauses 1.4 and 1.6;
  - b. to the maximum extent permitted by mandatory law, Telefónica Tech shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities (including any Data Protection Losses) arising from or in connection with any processing in accordance with the Customer's instructions following the Customer's receipt of that information;
- 1.10.10 shall deal promptly and properly with all enquiries from the Customer relating to the processing of the Protected Data and promptly comply with any request from Customer requiring Telefónica Tech to amend, transfer, delete or return the Protected Data and, if requested, to certify that this has been done;
- 1.10.11 shall not and will procure that any Sub-Processor shall not transfer the Protected Data (nor any part thereof) outside the European Economic Area without the prior written consent of the Customer. Such consent may be given in relation to a Sub-Processor in the manner set out in list on Telefónica Tech's website referenced in clause 1.8 of this GDPR Schedule; and
- 1.10.12 shall, unless Article 30(5) dis-applies the same, maintain record of all categories of processing activities carried out on behalf of the Customer which shall contain the details set out in Article 30(2) of the GDPR (and which shall be in writing, including in electronic form);
- 1.10.13 shall make available to the Customer all information as is necessary to demonstrate Telefónica Tech's compliance with the obligations laid down in this clause 1.10, and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose, subject to the Customer:
- a. giving Telefónica Tech reasonable prior notice of such information request, audit and/or inspection being required by the Customer;
  - b. ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);

- c. ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to Telefónica Tech 's business, the Sub-Processors' business and the business of other customers of Telefónica Tech; and
- d. paying Telefónica Tech 's (or the Sub-Processor's as the case may be) reasonable charges for assisting with the provision of information and allowing for and contributing to inspections and audits, such charges to be calculated on a time and materials basis at Telefónica Tech's (or the Sub-Processor's as the case may be) standard rates at the time.

1.10.14 shall provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of processing and the information available to Telefónica Tech) to the Customer in ensuring compliance with the Customer's obligations under Data Protection Laws with respect to:

- a. security of processing;
- b. data protection impact assessments (as such term is defined in Data Protection Laws);
- c. prior consultation with a Supervisory Authority regarding high risk processing; and
- d. notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach,

provided the Customer shall pay Telefónica Tech's reasonable charges for providing the assistance in this clause 1.10.14, such charges to be calculated on a time and materials basis at Telefónica Tech's standard rates at the time.

1.11 Each of the Customer and Telefónica Tech shall notify the other:

1.11.1 without undue delay and, in any event, not later than 72 hours after becoming aware of any unauthorised, unlawful or dishonest conduct or activities, any Personal Data Breach or any breach of the terms of the Relevant Agreement relating to Protected Data of which it becomes aware together with such information as may be required for Telefónica Tech or the Customer (as the case may be) to report the breach to the Supervisory Authority;

1.11.2 without undue delay of any complaint, notice or communication which relates directly or indirectly to the processing of the Protected Data or to either party's compliance with the Data Protection Act in relation to the Services;

1.11.3 without undue delay of any request for disclosure of the Protected Data by a law enforcement authority (unless such notification is forbidden by Applicable Law); and

1.11.4 within 3 (three) Business Days of any Data Subject Request;

For the purpose of this clause 1, a notice or request may be given or made by e-mail to the Specified E-Mail Address (in the case of the Customer); and to [info@telefonicatech.uk](mailto:info@telefonicatech.uk) (in the case of Telefónica Tech).

1.12 Telefónica Tech will reject any requests for disclosure of Protected Data that it is not bound to fulfil by law. Telefónica Tech will use reasonable endeavours to redirect any valid request to the Customer.

1.13 Telefónica Tech shall, at the Customer's option, either delete or return all the Protected Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:

1.13.1 the end of the provision of the relevant services related to processing; or

1.13.2 once processing by Telefónica Tech of any Protected Data is no longer required for the purpose of Telefónica Tech's performance of its relevant obligations under the Relevant Agreement,

and delete existing copies (unless storage of any data is required by Applicable Law and, if so, Telefónica Tech shall inform the Customer of any such requirement).

1.14 Telefónica Tech may amend this GDPR Schedule, with notice to Customer if:

1.14.1 required to do so by the Supervisory Authority; or

1.14.2 necessary to comply with Applicable Law; or

1.14.3 permitted or required to do so by a code of conduct under Article 40 of the GDPR or a certification mechanism approved under Article 43 of the GDPR.