

Date: 23rd June 2015

XXXXX

as Customer

L3C LLP

as Supplier

Hosting Agreement

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THIS AGREEMENT is made this 23rd day of June 2015

BETWEEN:

- (1) **XXXxx LIMITED** a XXXX corporation with its principal place of business at XXXXXX (the "**Customer**"); and
- (2) **L3C LLP** a company registered in England (company registration number OC385905) whose registered office is at 55 Baker Street, London W1U 7EU (the "**Supplier**").

WHEREAS:

Supplier provides certain hosting and support services which the Customer wishes to procure.

IT IS AGREED:

1. Definitions and Interpretation

1.1 In this Agreement (except where the context otherwise requires) the following words and expressions shall have the following meanings:

"**Acceptable Use Policy**" means the policy as set out in Schedule 4;

"**Administrative Representative**" means the individuals set out in the Commercial Schedule, who shall serve as the Supplier's primary contact for the Supplier's administrative activities under this Agreement; and

"**Authorised Help Desk Users**" means the End Users listed in the Commercial Schedule;

"**Business Day**" means any day which is not a Saturday, a Sunday or a bank or public holiday in England;

"**Commencement Date**" means the date of this Agreement;

"**Commercial Schedule**" means the schedule as set out at Schedule 1;

"**Customer Group**" means the Customer and any body corporate which is from time to time a holding company of the Customer, a subsidiary of the Customer or a subsidiary of a holding company of the Customer;

"**Customer Materials**" means any:

- (a) software, data, documentation or any other materials (including reports, studies, data, diagrams, charts, specifications and programs); and
- (b) items as set out as Customer Materials in the Commercial Schedule,

provided by the Customer or any End User, and (i) run on the Hosting Services; or (ii) interface with the Hosting Services; or (iii) are installed, uploaded, transferred, used, processes or stored in connection with the Services;

"**Customer Premises**" means the Customer's premises as set out in the Commercial Schedule;

"Customer Representatives" means the Technical Representative and Administrative Representative, who shall serve as the Supplier's primary contacts for the Supplier's activities under this Agreement;

"End Users" means any individual or entity that directly or indirectly through another user: (a) accesses or uses the Customer Material; or (b) otherwise accesses or uses the Hosting Services under the Customer's account;

"Fees" means the fees payable by the Customer for the Services, as set out in the Commercial Schedule;

"Hosting Services" means the services that the Supplier provides to allow the Customer to store, deploy, access and use the Customer Materials, including hosting set-up, secure VPN access and on-going services as set out in the Commercial Schedule;

"Initial Term" means the period set out in the Commercial Schedule, which may be extended as a result of Service Credits applied in accordance with Schedule 3;

"Intellectual Property Rights" means all rights including future rights in inventions, patents, designs, copyrights, trade marks, services marks, databases and topography rights (whether or not any of those is registered and including applications for registrations of the foregoing) together with all trade secrets, know-how and all rights or forms of protection of a similar nature or having equivalent or similar effect to any others which may subsist anywhere in the world;

"Laws" means statutes, statutory instruments, regulations, orders, and other legislative provisions in any jurisdiction including any delegated or subordinate legislation, any enforceable community rights within the European Community and any judgment of a relevant court of law or decision of a tribunal or competent authority;

"Maintenance" means Planned Maintenance and Unscheduled Maintenance;

"Planned Maintenance" means such preventative, routine or scheduled maintenance work, including tests and adjustments, as the Supplier may consider necessary for the Hosting Services, or any element of the Services, to be maintained in efficient working order;

"Service Levels" means the service levels specified in Schedule 3;

"Service Credits" means the service credits specified in Schedule 3;

"Services" means the Hosting Services and Support Services as applicable, given the context in which the term Services is used;

"Supplier Site" means Pulsant Data Centres in Milton Keynes and Croydon as at the Commencement Date;

"Support Services" means any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Hosting Services, as well as any other provided to the Customer under this Agreement, all as described in Schedule 2;

"Technical Representative" means the individuals set out in the Commercial Schedule, who shall serve as the Supplier's primary contact for the Supplier's technical activities under this Agreement; and

"Unscheduled Maintenance" means any such unscheduled emergency or critical maintenance work, including tests and adjustments, as the Supplier may consider necessary for the Hosting Services, or any element of the Services, to be maintained in efficient working order.

1.2 In this Agreement (except where the context otherwise requires):

- (a) any reference to a Recital, Clause or Schedule is to the relevant Recital, Clause or Schedule of or to this Agreement;
- (b) the Clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- (c) use of the singular includes the plural and vice versa;
- (d) use of any gender includes the other genders;
- (e) any reference to **"persons"** includes individuals, firms, partnerships, companies, corporations, associations, organisations, foundations and trusts (in each case whether or not having separate legal personality);
- (f) any reference in this Agreement to any statute, statutory provision, subordinate legislation, code or guideline ("**legislation**") shall be construed as referring to such legislation as the same may from time to time be amended, modified, extended, varied, superseded, replaced, substituted or consolidated;
- (g) any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any references to this Agreement includes the Schedules.

1.4 In any conflict between these general terms and any Schedule, these general terms shall take precedence.

2. Scope

The Supplier will provide the Services and procure that its employees, agents and subcontractors provide the Services, in accordance with the provisions of this Agreement.

3. Service Levels

3.1 The Supplier will use reasonable endeavours to ensure that the Hosting Services are performed in such a way as to meet the Service Levels.

3.2 If the Hosting Services fail to meet the Service Levels, the Customer will be entitled to Service Credits which will extend the Term of this Agreement in accordance with the methodology set out in Schedule 3.

3.3 The parties acknowledge and agree that the Service Credits are a fair and genuine pre-estimate of the loss that will be suffered by the Customer and the Customer Group in not receiving the Hosting Services in accordance with the Service Levels.

3.4 The provision of a Service Credit shall be an exclusive remedy for a particular Service Level failure.

4. Supplier Obligations and Rights

4.1 The Supplier shall use reasonable endeavours:

- (a) to use, and procure that the Supplier's, employees, agents and sub-contractors use reasonable skill and care in the performance of the Services as would be expected of an experienced and competent supplier of similar services;
- (b) to ensure that the Supplier's, employees, agents and sub-contractors will be suitably skilled, experienced and qualified to carry out the Services;
- (c) to comply, and ensure its employees, agents and sub-contractors comply with all applicable laws, enactments, orders, regulations, standards and other similar instruments.

4.2 The Supplier shall be entitled to suspend the provision of the Services in the event that the Customer's use of the Services is unlawful or illegal or for any other reason it considers necessary.

4.3 The Supplier reserves its right to move the location of the Site from time to time.

5. Customer Obligations and Responsibilities

5.1 The Customer is solely responsible for the Customer Material. The Customer must ensure that it has all the necessary rights and permissions to the use the Customer Material in connection with the Hosting Services. The Customer shall:

- (a) comply, and ensure the Customer Materials complies, with:
 - (i) all applicable Laws and regulations with respect to its activities under this Agreement;
 - (ii) the Acceptable Use Policy;
- (b) at its own cost apply for, possess and maintain any authorisations, permissions, licences, consents, registrations and/or permits which are required to enable it to conduct its business, use the Services, use the Customer Material in connection with the Services and comply with its obligations under this Agreement;
- (c) be responsible for:
 - (i) implementing all necessary business continuity and disaster recovery plans in relation to the Customer Materials. For the avoidance of doubt, the Supplier's only responsibility regarding service uptime is in accordance with the Service Levels;
 - (ii) properly configuring and using the Hosting Services and taking steps to maintain appropriate security, protection and backup of the Customer Materials, which may include the use of encryption technology to protect the Customer Materials from unauthorised access and routine archiving of the Customer Materials;
 - (iii) the technical operation of the Customer Materials;
 - (iv) any claims relating to the Customer Materials;

- (v) properly handling and processing notices received by the Customer (or any of the Customer's affiliates) by any person claiming that the Customer Materials violate such person's rights, including notices pursuant to the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013);
 - (vi) Customer log-in credentials and private keys generated by the Services which are for the Customer's internal use only (**Log-in Credentials**). The Customer may not sell, transfer or sublicense the Log-in Credentials to any other entity or person, except to the extent that the Log-in Credentials may be disclosed to the Customer's agents and subcontractors performing work on the Customer's behalf; and
 - (vii) ensuring that all End Users comply with the Customer's obligations under this Agreement and that the terms of the Customer's agreement with each End User are consistent with this Agreement. If the Customer becomes aware of any violation of its obligations under this Agreement by an End User, the Customer will immediately terminate such End User's access to the Customer Materials and the Services.
- (d) provide the Supplier with:
- (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;
- in order to provide the Services;
- (e) provide such assistance, including the Customer Representatives and other Customer personnel assistance, as may be reasonably requested by the Supplier from time to time. The Customer shall use reasonable endeavours to ensure continuity of its personnel assigned to this Agreement;
 - (f) carry out all other Customer responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery schedule as reasonably necessary;
 - (g) provide the Supplier, its employees, agents, consultants and subcontractors with access to the Customer's Premises, office accommodation and other facilities as reasonably required to provide the Services; and
 - (h) use reasonable endeavours to prevent any unauthorised access to, or use of, the Services and notify the Supplier promptly of any such unauthorised access or use;

5.2 Unless otherwise stated in the Commercial Schedule, the Customer shall be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's Site, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

5.3 The Customer shall not, and shall ensure End Users do not:

- (a) store, distribute or transmit any Virus, or any material on the Customer Materials or on the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing,

harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

- (b) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services (except to the extent software included in the Services are provided to you under a separate license that expressly permits the creation of derivative works);
- (c) reverse engineer, disassemble, or decompile the Services or apply any other process or procedure to derive the source code of any software included in the Services; or
- (d) access or use the Services in a way intended to avoid incurring fees or exceeding usage limits or quotas.

5.4 The Customer will be deemed to have taken any action that it permits, assists or facilitates any person or entity to take related to this Agreement, Customer Materials or use of the Hosting Services.

6. Maintenance

6.1 The Supplier, or such third party as the Supplier may designate from time to time, will be entitled to undertake Maintenance. The Supplier agrees:

- (a) to provide at least [10] days' written notice to the Customer before initiating any Planned Maintenance operation;
- (b) to use reasonable endeavours to give the Customer as much notice as possible in advance of any Unscheduled Maintenance operation; and
- (c) to take all reasonable steps (and procure that those third parties as designated by the Supplier take all reasonable steps) to minimise disruption to the operation of the Services arising from Maintenance operations.

7. Payment and Related Provisions

7.1 The Supplier will invoice the Customer quarterly in advance in accordance with the provisions of the Commercial Schedule, invoices will include the following information:

- (a) a description of the Services which relate to the invoice;
- (b) the total charges payable under the invoice.

7.2 The Customer shall reimburse the Supplier for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by the Supplier in performance of the Services.

7.3 The Customer will pay invoices within 30 days after date of invoice (the "**Due Date**") invoice which complies with Clause 7.1 and Clause 7.4.

7.4 The Customer will pay the Supplier any Value Added Tax ("**VAT**") properly chargeable on Services supplied by the Supplier pursuant to this Agreement, provided the Supplier has delivered a correct VAT invoice as required by statute.

7.5 The Supplier may charge interest on overdue payments in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 or, in the event that the Late Payment of Commercial Debts

(Interest) Act 1998 is deemed to not apply to any amount outstanding under this Agreement, at a rate of 8% above the base rate of the Bank of England from time to time, such interest to accrue on a day to day basis.

8. Data Protection

8.1 In this Clause 8, "**process**", "**data processor**", "**data subject**" and "**personal data**" shall have the meaning given in the Data Protection Act 1998.

8.2 The Customer hereby appoints the Supplier as data processor in relation to personal data:

- (a) which the Supplier receives under or in connection with the performance of this Agreement; and
- (b) in respect of which the Customer is a data controller.

8.3 In processing personal data pursuant to this Agreement, the Supplier shall:

- (a) act only on instructions from the Customer;
- (b) unless otherwise requested by the Customer, process personal data only to the extent, and in such manner, as is necessary for the provision of the Services;
- (c) ensure that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
- (d) from time to time, comply with any reasonable request made by the Customer to ensure compliance with the measures mentioned in Clause 8.3(c);
- (e) take the measures mentioned in 8.3(c), having regard to the state of technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to:
 - (i) the harm that may result from unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
 - (i) the nature of personal data to be protected;
- (f) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the personal data;
- (g) ensure that all Supplier Personnel involved in the processing of personal data have undergone adequate training in the care, protection and handling of personal data;
- (h) not disclose or transfer personal data to any subcontractors other than where strictly necessary for the provision of the Services and in such event the Supplier shall obtain the Customer's prior written consent to such transfer or disclosure;
- (i) not cause or permit personal data to be transferred outside the European Economic Area without the Customer's prior consent;

- (j) provide at no charge such assistance as the Customer may reasonably require in order for the Customer to deal with any request for subject access under the Data Protection Law; and
- (k) comply with all relevant provisions of Data Protection Law.

9. Intellectual Property Rights

Customer Materials

- 9.1 The Intellectual Property Rights in the Customer Materials provided by the Customer and used by the Supplier in carrying out the Services shall remain vested in the Customer for the respective third party licensor, as the case may be.
- 9.2 With effect from the Commencement Date, the Customer hereby grants to the Supplier a royalty free, non-exclusive, transferable licence for the duration of the Agreement to install, use, copy and modify the Customer Materials only to the extent required to provide the Services to the Customer and perform its obligations under this Agreement.
- 9.3 The Customer represents and warrants that it:
 - (a) or its licensors owns the Intellectual Property Rights in and to the Customer Materials;
 - (b) has all the rights in the Customer Materials necessary to grant the rights contemplated by this Agreement, including but not limited to the licence to the Supplier in accordance with Clause 9.2; and
 - (c) none of the Customer Materials or End Users' use of the Customer Materials or Hosting Services will violate the Supplier's Acceptable Use Policy or any Laws;

Services

- 9.4 The Intellectual Property Rights in the Services, Supplier documentation or any other materials (including reports, studies, data, diagrams, charts, specifications, programs and data) provided by the Supplier and used by the Supplier in carrying out the Services shall remain vested in the Supplier.
- 9.5 With effect from the Commencement Date, the Supplier hereby grants to the Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable licence for the duration of the Agreement to access and use the Hosting Services solely in accordance with this Agreement. Except as provided for in this Clause 9.5, the Customer obtains no rights under this Agreement from the Supplier or its licensors to the Hosting Services, including any related Intellectual Property Rights.

10. Indemnities

- 10.1 The Customer will indemnify the Supplier and its directors, and keep the Supplier and its directors indemnified and hold harmless the Supplier and its directors from and against all and any liability, loss, damage, costs and expenses which the Supplier, its directors or any third party may incur or suffer, whether direct or consequential (including, without limitation, any economic loss or loss of profits, business or goodwill), in connection with any and all of the following:
 - (a) any disputes, contractual, tortious or other claim or proceedings brought against the Supplier by a third party alleging infringement of its Intellectual Property Rights by reason of the use, possession, marketing or exploitation of any of the Customer Materials;

- (b) any loss of or damage to any property, or the death or personal injury of any employee of the Customer, or its sub-contractors, or any other person to the extent arising as a result of the negligence or wilful acts or omissions of the Customer in relation to the performance of its obligations under this Agreement;
- (c) any breach of the obligations and warranties given by the Customer under Clauses 5 and 9.3;
- (d) any fraud or wilful default by the Customer, its employees or sub-contractors or End Users;
- (e) the Customer's or any End User's use of the Services (including activities under the Customer's account and use by the Customer's employees and personnel); and
- (f) a dispute between the Customer and any End User;

11. Disclaimers

- 11.1 The Services are provided "AS IS." The Supplier and its licensors make no representations or warranties of any kind, whether express, implied, statutory or otherwise regarding the Services, including that the Services will be uninterrupted, error free or free from harmful components, or that any content, including Customer Materials, will be secure or not otherwise lost or damaged. Except to the extent prohibited by Law, the Supplier and its affiliates and licensors disclaim all warranties, conditions and representations, including any implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, or quiet enjoyment and any warranties arising out of any course of dealing or usage of trade.

12. Limitations of Liability

- 12.1 The Supplier shall not be liable to the Customer for any loss of profit or loss of revenue arising out of or in connection with:
- (a) this Agreement; or
 - (l) any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence).
- 12.2 The Supplier shall not be liable to the Customer for:
- (a) any indirect loss;
 - (b) any loss of profit, loss of revenue, loss of anticipated savings or loss of business;
 - (c) any loss of contracts, goodwill, reputation or opportunity;
 - (d) any loss of or corruption of data; or
 - (e) any loss in connection with:
 - (i) the Customer's inability to use the Services, including as a result of: (A) any termination or suspension of this Agreement or the Customer's use of or access to any of the Services; (B) without limiting any obligations under the Service Levels, any unanticipated or unscheduled downtime of all or a portion of the Services for any reason, including as a result of power outages, system failures or other interruptions;

- (ii) the cost of procurement of substitute goods or services;
- (iii) any investments, expenditures or commitments by the Customer in connection with this Agreement or the Customer's use of or access to the Services; and
- (iv) any unauthorised access to, alternation of, of the deletion, destruction, damage, loss or failure to store any of the Customer Materials,

in each case arising out of or in connection with this Agreement or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence).

12.3 Each party's total liability arising under or in connection with this Agreement or any breach or non-performance of it no matter how fundamental (including by reason of that party's negligence) in contract, tort or otherwise shall be limited to 1 year contract value.

12.4 Clause 12.3 shall not limit either party's liability in respect of:

- (a) any Fees payable to the Supplier or any obligation to repay overpayments of Fees; or
- (b) any amounts payable by way of indemnity pursuant to Clauses 10,
- (c) and no amount payable in respect of the items set out in this Clause shall count towards the caps on liability under Clause 12.3.

12.5 The Supplier's total liability for Service Credits in respect of each month shall be limited to the extension of the Term for a maximum period of one month.

12.6 Notwithstanding any contrary provision in this Agreement, neither party limits or excludes its liability in respect of:

- (a) any death or personal injury caused by its negligence;
- (b) any fraud;
- (c) any other statutory or other liability which cannot be excluded or limited under applicable Laws.

12.7 The parties agree that each of Clauses 12.1, 12.2 and 12.3 are separate and independent terms of this Agreement.

13. Suspension

13.1 The Supplier, may suspend the Customer and/or any End User's (as applicable) right to access or use any or all of the Services immediately upon notice to the Customer:

- (a) in the Supplier's opinion the Customer or an End User's use of the Services: (i) poses a security risk to the Services or any third party; (ii) may be fraudulent; or (iii) breaches the Acceptable Use Policy; or
- (b) the Customer or any End User is in breach of this Agreement, including if the Customer fails to make payment within [5] days of the invoice due date.

13.2 In the event the Supplier suspends the Services in accordance with Clause 13.1:

- (a) the Customer remains responsible for all Fees during any suspended period;

- (b) the Customer will not be entitled to any Service Credits during any suspended period; and
- (c) the Supplier will not erase any Customer Material as a result of the suspension except as otherwise allowed under this Agreement.

13.3 The Supplier's right to suspend the Customer's or any End User's right to access or use the Services is in addition to its rights to terminate this Agreement in accordance with Clause 14.

14. Term and Termination

14.1 This Agreement will commence on the Commencement Date and shall continue for the Initial Term, unless terminated in accordance with the provisions of this Agreement. After the Initial Term, this Agreement shall automatically renew for yearly periods (subject to any extension as a result of Service Credits) ("**Renewal Term**"), unless either party notifies the other, in writing, at least 90 days before the end of the then current term.

14.2 Notwithstanding Clause 14.1, either party ("**Non-Defaulting Party**") may terminate this Agreement with immediate effect by written notice to the other party ("**Defaulting Party**") if:

- (a) the Defaulting Party commits a breach of its obligations under this Agreement and, if the breach is capable of remedy, fails to remedy it during the period of 20 days starting on the date of receipt of notice from the Non-Defaulting Party requiring it to be remedied;
- (b) if the Defaulting Party makes or offers to make any arrangement or composition with creditors; or
- (c) if any resolution or petition to wind up the business of the Defaulting Party (other than for the purpose of or reconstruction or amalgamation or for transfer of any engagement or business) shall be passed or presented or if a receiver or administrative receiver of the Defaulting Party undertaking, property or assets shall be appointed or a petition presented for the appointment of an administrator;
- (d) the Defaulting Party suffers, or there occurs in relation to that Party, any event which in the reasonable opinion of the Non Defaulting Party is analogous to any of the events mentioned in sub-clauses 14.2(b) and 14.2(c) in any part of the world.

14.3 Notwithstanding Clause 14.1, the Supplier may terminate this Agreement with immediate effect by written notice to the Customer if:

- (a) a contract essential to the provision of the Services is terminated or expires;
- (b) the Customer persistently commits breaches of its obligations under this Agreement (whether or not the same are capable of remedy) and as a consequence the provision of the whole or any part of the Services is, or is likely to be, adversely affected and/or the business of the Supplier is, or is likely to be, materially prejudiced or damaged.

14.4 Any termination of this Agreement will be without prejudice to any other rights or remedies of either party under this Agreement, or at law, and will not affect any accrued rights or liabilities of either party at the date of termination.

15. The Customer's Obligations on Termination

15.1 If this Agreement is terminated:

- (a) in accordance with clause 14.1, the Customer must, before the effective date of the termination of this Agreement, retrieve and delete the Customer Material from the Hosting Services, provided that the Customer, has, at the time, paid all the Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination);
- (b) for any reason other than in accordance with clause 14.1, the Customer must, within 10 days following the effective date of termination of this Agreement, retrieve and delete the Customer Material from the Hosting Services, provided that the Customer, has, at the time, paid all the Fees and charges outstanding at and resulting from termination (whether or not due at the date of termination).

15.2 Unless this Agreement is terminated by the Supplier in accordance with clause 14.2 or 14.3(b), the Supplier can provide the Customer with post-termination assistance, subject to the Supplier's costs.

16. Consequences of Termination

16.1 On termination of this Agreement for any reason:

- (a) all licences granted to the Customer under this Agreement shall immediately terminate;
- (b) the Customer shall make no further use of the Services, any equipment, property, materials and other items (and all copies of them) belonging to the other party other than to retrieve or delete Customer Material in accordance with Clause 15.1;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Materials in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the Supplier to assist the Customer with the removal of the Customer Materials from the Hosting Service. The Supplier shall use reasonable commercial endeavours to assist the Customer to retrieve the Customer Material within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of the Customer Materials.

17. Survival

17.1 The following provisions of this Agreement will survive the termination of the Agreement or completion or termination of any relevant Project and continue indefinitely: 1, 7, 9.1, 9.2, 10, 11, 12, 15, 16, 17, 18, 20, 21, 23, 24, 28 and 30.

17.2 The termination of this Agreement will not prejudice or affect any right of action or remedy which has already accrued to either party.

18. Confidentiality

18.1 Each of the parties shall keep confidential all information concerning the business, finances, technology, affairs, clients, marketing plans of the other and other information which is identified as such or is confidential by its nature (including but not limited to the terms of this Agreement) ("**Confidential Information**").

18.2 The provisions of Clause 18.1 shall not apply to:

- (a) information that has come into the public domain other than by breach of this Clause or any other duty of confidence;
- (b) information that is obtained from a third party without breach of this Clause or any other duty of confidence;
- (c) information that is required to be disclosed by law; or
- (d) information that is disclosed to professional advisors for the purpose of obtaining professional advice (subject to obtaining a satisfactory commitment from that party in respect of confidentiality).

18.3 The restrictions contained in this Clause shall continue to apply after the termination or expiry of this Agreement (however arising) without limit in time.

18.4 The Supplier may at any time require the Customer to procure that its employees, agents and any sub-contractors, give written undertakings in a form satisfactory to the Supplier relating to the non-disclosure of the Supplier's Confidential Information and Supplier shall use its best endeavours to procure the same.

19. Force Majeure

19.1 In this Agreement, "**force majeure**" shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, acts of God, war or terrorist activity, riot or civil commotion. For the avoidance of doubt, strikes, lock-outs or other industrial disputes involving the work force of the party so prevented or of its sub-contractors or suppliers shall not constitute "force majeure" for the purposes of this Agreement.

19.2 If either party is prevented or delayed in the performance of any of its obligations under this Agreement by force majeure, that party (the "**Claiming Party**") shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure, and shall subject to service of such notice have no liability in respect of any delay in performance or any non-performance of any obligation under this Agreement (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to force majeure PROVIDED THAT:

- (a) the Claiming Party could not have avoided the effect of the force majeure by taking precautions which, having regard to all matters known to it before the occurrence of the force majeure and all relevant factors, it ought reasonably to have taken but did not take; and
- (b) the Claiming Party has used and continues to use reasonable endeavours to mitigate the effect of the force majeure and to carry out its obligations under this Agreement in any other way that is reasonably practicable.

19.3 If either party is prevented from performance of its obligations by force majeure for a continuous period in excess of three months, the other party may terminate this Agreement forthwith on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

20. Severability

- 20.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 20.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.
- 20.3 The parties agree, in the circumstances referred to in Clause 20.1 and if Clause 20.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of this Agreement shall be suspended whilst an attempt at such substitution is made.

21. Notices

- 21.1 Any notice or other communication given or made under this Agreement shall be in writing and in English and signed by or on behalf of the party giving it and may be served by hand, delivering it or sending it by prepaid recorded, special delivery post, prepaid international recorded airmail or fax to the address and for the attention of the relevant party set out in Clause 21.2 (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:
 - (a) if hand delivered or sent by prepaid recorded or special delivery post or prepaid international recorded airmail, at the time of delivery;
 - (b) if sent by post (other than by prepaid recorded or special delivery post), two days from the date of posting;
 - (c) if sent by airmail (other than by prepaid international recorded airmail), five days from the date of posting; and
 - (d) in the case of fax, on the day of transmission.

Provided that if deemed receipt occurs before 9.00 a.m. on a Business Day the notice shall be deemed to have been received at 9.00 a.m. on that day, and if deemed receipt occurs after 5.00 p.m. on a Business Day, or on any day which is not a Business Day, the notice shall be deemed to have been received at 9.00 a.m. on the next Business Day. References to any time shall be to London time.

- 21.2 The addresses and fax numbers of the parties for the purposes of Clause 21.1 are:

Customer

Address: **[INSERT]**

For the attention of: **[INSERT]**

Fax number: **[INSERT]**

Supplier

Address: **[INSERT]**

For the attention of: **[INSERT]**

Fax number: **[INSERT]**

or such other address or number as may be notified in writing from time to time by the relevant party to the other party. Any such change to the place of service shall take effect five Business Days after notice of the change is received or (if later) on the date (if any) specified in the notice as the date on which the change is to take place.

- 21.3 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out in Clause 21.2 (or as otherwise notified by that party hereunder) and delivered either to that address or into the custody of the postal authorities as a prepaid recorded or special delivery or international recorded airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party set out in Clause 21.2 (or as otherwise notified by that party hereunder).

22. Amendments

No modification or variation of this Agreement (or any document entered into pursuant to or in connection with this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Agreement.

23. Waiver

- 23.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- 23.2 A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

24. Rights Cumulative

The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.

25. Third Party Rights

Except insofar as this Agreement expressly provides that a third party may in his own right enforce a term of this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

26. No Partnership or Agency

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have 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).

27. Counterparts

This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. The Agreement is not effective until each party has executed at least one counterpart.

28. Entire Agreement

28.1 This Agreement, together with any Schedules to this Agreement constitutes the entire Agreement and understanding of the parties and supersedes, and renders no legal effect, any previous agreement between the parties relating to the subject matter of this Agreement.

28.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty, understanding, promise or assurance (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

28.3 Without prejudice to the provisions of Clause 28.2, the only remedy available to any Part for breach of any provision of this Agreement shall be for breach of contract.

29. Assignment and Sub-Contracting

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

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

30. Governing Law and Jurisdiction

30.1 The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the law of England.

30.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any, claim, dispute or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.

This Agreement has been signed on behalf of each of the parties by a duly authorised signatory on the date stated at the beginning of this document.

SIGNED[for and on behalf of xxxxx Limited

.....

Signature

.....

Print name

.....

[Title]

SIGNED[for and on behalf of L3C LLP:

.....

Signature

.....

Print name

.....

[Title]

Schedule 1 – Commercial Schedule To be Completed when final

Hosting Services	[INSERT] DESCRIPTION/ QTY
Initial Term	[INSERT]
Fees	[INSERT]
Customer Materials	[INSERT]
Customer Premises	[INSERT]
Customer Representatives	Technical Representative: [INSERT] Administrative Representative: [INSERT]
Customer Ref No	[INSERT]
Authorized Help Desk Users	[INSERT]

Schedule 2 – Support Services

1. Definitions

1.1 For the purpose of this Schedule X, the following terms shall have the following meanings:

"**Business Days**" shall mean Monday to Friday, but excluding public holidays in England and Wales;

"**Hours of Support**" means 09.00 to 17.00 GMT during Business Days

"**Incident**" means a problem with the Hosting Services; and

"**Response Time**" shall have the meaning set out in paragraph 5.1.

"**Resolution Time**" shall have the meaning set out in paragraph 5.1;

"**Support Request**" means a request made by the Customer in accordance with this schedule for support in relation to an Incident;

2. Support Service Availability

2.1 The Supplier shall use its reasonable endeavours to ensure that the following helpdesk services are available to the Customer during the Hours of Support:

- (a) manned telephone support; and
- (b) monitored e-mail.

2.2 The Technical Representative and Authorised Help Desk Users shall be authorised to contact the Supplier for technical support services. The Supplier shall provide technical support services only to the specified Technical Representative and Authorised Help Desk Users.

3. Incident Resolution

3.1 Where a Support Request is made to the Supplier by telephone or email by the Technical Representative or Authorised Help Desk Users in the English language, the Supplier shall classify it as either a Priority 1, Priority 2 or Priority 3 Incident as follows:

Incident	Definition
Priority 1	Incident Critical failure: the Customer is unable to use a material element of the functionality of the Hosting Services.
Priority 2	Incident Major failure: the Customer is able to use the Hosting Services but non critical elements no analytics are un-available.
Priority 3	Non-urgent failure: the Customer is unable to use an element of the Hosting Services, but neither a Priority 1 Incident nor a Priority 2 Incident has occurred.

4. Response Times and Resolution Times

- 4.1 The Supplier shall use its reasonable endeavours to respond to each Support Request in accordance with the Target Response Times set out below.
- 4.2 The Supplier shall use its reasonable endeavours to resolve each Incident in accordance with the Target Resolution Times set out below.

Incident	Target Response Time	Target Resolution Time
Priority 1 Incident	[Acknowledgment of receipt of Support Request within 30 minutes.]	72 hours
Priority 2 Incident	[Acknowledgment of receipt of Support Request within 120 minutes.]	5 Business Days
Priority 3 Incident	[Acknowledgment of receipt of Support Request within 300 minutes.]	[Next release / upgrade]

- 4.3 The Response Time for each Support Request shall be measured from the time at which the Supplier is notified of the Support Request in question during the Hours of Support and shall finish when the Support Request is acknowledged by the Supplier.
- 4.4 The Resolution Time for each Incident shall be measured from the time at which the Supplier is notified of the Incident in question during the Hours of Support and shall finish when the Incident has been resolved.
- 4.5 Remote assistance will be provided, where appropriate, in-line with the above timescales.
- 4.6 The Resolution Times and Response Times shall exclude:
 - (a) any period during which the Supplier awaits a response from the Customer;
 - (b) any period outside of the Hours of Support;
 - (c) any period of Maintenance; and
 - (d) any delay or Incident due to a third party outside of the reasonable control of the Supplier.

5. Exclusions

- 5.1 The Supplier shall not be obliged to meet its obligations in this SLA where:
 - (a) an assumption has not been met (as set out in paragraph 6);
 - (b) the Customer has not met its payment obligations as set out in the Agreement;

- (c) the failure to meet the Service Level is due to the Customer, Customer Materials or a third party outside of the Supplier's control;
- (d) the Customer has not complied with any of its other obligations as set out in the Agreement; or
- (e) the Customer has not provided the reasonable availability of the Customer Technical Representative or Authorised Help Desk Users (as applicable) when the Supplier is seeking to resolve an Incident.

6. Assumptions

6.1 In providing the Service Levels, the Supplier makes the following assumptions:

- (a) it is not responsible for any temporary or permanent outage or downtime of the Service due to a change, fix, bug, error or issue in the Customer Materials;
- (b) it is not responsible for any issues resulting from network connections and telecommunications links from the Customer's systems to the Supplier's Site or helpdesk services, or any problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

Schedule 3 - Service Level Arrangements

1. Hosting Service Availability

The Supplier shall provide at least a 99.5% uptime service availability level (**Uptime Service Level**) for the Hosting Services. This availability refers to an access point on the Supplier hosting provider's backbone network. Availability does not apply to Service Level Exclusions (as set out in paragraph 4, of this Schedule 3 below

Availability Measurement

All measurements are performed at [five-minute] intervals and measure the availability of an availability test page within the Software within 30 seconds. Availability measurement begins on the first day of the first calendar month, beginning not less than 30 days after Customer acceptance of all of the Deliverables delivered to the Customer during the Configuration Services pursuant to clause 2. Availability measurement shall be carried out by the Supplier and is based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by total possible uptime minutes in the month. The Supplier shall keep and shall send to the Customer, on request, full records of its availability measurement activities under this agreement

Service Credits

- 1.1 If availability falls below the Uptime Service Level (as defined in paragraph 1 of this Schedule 3) in a given calendar month (Service Delivery Failure), the Supplier shall credit the Customer's account by extending the Term by a period calculated as one month (Service Credit).
- 1.2 The maximum Service Credit allowable in a given month is limited to an extension of the Term by one month.
- 1.3 The Customer acknowledges and agrees that the terms of this Schedule 3 relating to Service Credits constitute a genuine pre-estimate of the loss or damage that the Customer would suffer as a result of the Supplier's Service Delivery Failure and are not intended to operate as a penalty for the Supplier's non-performance.

2. Supplier Service Level Exclusions

- 2.1 The Service Levels as set out in this Schedule 3 do not apply to any unavailability, suspension or termination of Hosting Services, or any other Hosting Service performance issues:
 - (a) that result from a suspension described in Clause 13 of the Agreement;
 - (b) caused by factors outside the Supplier's reasonable control, including any force majeure event within the meaning of Clause 19, or any Internet access, outages, disruptions or related problems beyond the demarcation point of the Hosting Services;
 - (c) that result from any Customer or third party actions or inactions of you, [including failure to acknowledge a recovery volume];
 - (d) that result from Customer Materials, Customer equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within the Supplier's direct control);
 - (e) the result from Maintenance;

- (f) arising from the Supplier terminating or suspending the Customer's right to use the Hosting Services in accordance with the Agreement

collectively, the "**SLA Exclusions**".

It does not apply to the portion of the circuit that does not transit the hosting provider's backbone network, as the Customer is responsible for its own internet access. Availability does not include Maintenance, Customer-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by the Supplier to perform the Hosting Services), or outages or disruptions attributable in whole or in part to force majeure events within the meaning of Clause 19.

Schedule 4 – Acceptable Use Policy

1. This Acceptable Use Policy sets out the prohibited uses of the Services and applies to the Customer and End Users of the Services.
2. The Customer and End Users may use the Services only for lawful purposes. The Customer and End User must not use the Services:
 - (a) in any way that breaches any applicable local, national or international law or regulation.
 - (b) in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect.
 - (c) for the purpose of harming or attempting to harm minors in any way.
 - (d) to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam).
 - (e) to knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.
 - (f) to access without authority, interfere with, damage or disrupt:
 - (i) any part of the Services;
 - (ii) any equipment or network associated with the Services;
 - (g) any software used in the provision of the Services; or
 - (h) any equipment or network or software owned or used by any third party in connection with the Services.
3. Customer Material must not:
 - (a) contain any material which is defamatory of any person;
 - (b) contain any material which is obscene, offensive, hateful or inflammatory;
 - (c) promote sexually explicit material;
 - (d) promote violence;
 - (e) promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
 - (f) infringe any copyright, database right or trade mark of any other person;
 - (g) be likely to deceive any person;
 - (h) be made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence;
 - (i) promote any illegal activity;

- (j) be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety;
- (k) be likely to harass, upset, embarrass, alarm or annoy any other person;
- (l) be used to impersonate any person, or to misrepresent your identity or affiliation with any person;
- (m) give the impression that they emanate from the Supplier; or
- (n) advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse.