

# Pritchard Consulting Master Services Agreement

Pritchard Consulting Master Services Agreement

<i>Master Services Agreement</i> .....	3
1. <i>Definitions and Construction</i> .....	4
2. <i>Provision of Services and Licenses</i> .....	7
3. <i>Duration</i> .....	9
4. <i>Charges</i> .....	10
5. <i>Transferring Staff</i> .....	11
6. <i>Changes to the Services</i> .....	12
7. <i>Service Levels</i> .....	12
8. <i>Warranties and indemnities</i> .....	13
9. <i>Customer Obligations and Warranties</i> .....	14
10. <i>Pritchard Consulting Provided Equipment</i> .....	15
11. <i>Customer Provided Equipment</i> .....	15
12. <i>Insurance</i> .....	16
13. <i>Limitation of liability</i> .....	16
14. <i>Supervision of the Services</i> .....	18
15. <i>Intellectual property rights</i> .....	18
16. <i>Termination</i> .....	20
17. <i>Effect of termination</i> .....	20
18. <i>Confidentiality</i> .....	21
19. <i>Force Majeure</i> .....	22
20. <i>Waiver</i> .....	22
21. <i>Notices</i> .....	22
22. <i>Publicity</i> .....	23
23. <i>Invalidity and severability</i> .....	23
24. <i>Entire agreement</i> .....	23
25. <i>Successors</i> .....	23
26. <i>Assignment</i> .....	23
27. <i>Subcontracting</i> .....	23
28. <i>Disputes</i> .....	23
29. <i>VAT</i> .....	24
30. <i>Indemnity – Conduct of Claims</i> .....	24
31. <i>Law</i> .....	24
32. <i>Schedule 1 - Change Control Procedure</i> .....	26
33. <i>Schedule 2 – Service Terms and Conditions</i> .....	29
34. <i>Schedule 2 – The Services Order Sheet</i> .....	29

## MASTER SERVICES AGREEMENT

The clause headings and any other headings are inserted for convenience only and shall not affect the construction of this Agreement.

If any of the parties hereto consist of two or more persons their obligations hereunder shall be joint and several.

References in this Agreement to any party shall include its respective heirs successors in title permitted assigns and personal representatives and this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors.

In this Agreement the singular includes the plural and vice versa and any gender includes any other gender and the neuter.

Reference to any statute, statutory provision, by-law, Statutory Instrument or the like includes a reference to such provision as from time to time amended, extended or re-enacted.

References to clauses, paragraphs or schedules are references to those clauses, paragraphs and schedules in or annexes to this Agreement. This Agreement shall be read with the Schedules to it which shall be deemed incorporated into it.

The Agreement between Pritchard Consulting and the Customer comprises of the following documents:

- a) The Master Services Agreement
- b) Schedule 1 – Change Controls Procedure
- d) Schedule 2 - The Services Order Sheet (“SOS”)

In the event of conflict between the documents comprising of this Agreement, precedence shall be given to documents in the following order

- a) The Pritchard Consulting Addendum (if Applicable)
- b) The Master Service Agreement
- c) Schedule 1 – Change Control Procedure
- d) Schedule 2 – The Services Order Sheet (“SOS”)

## 1. DEFINITIONS AND CONSTRUCTION

In this Agreement the following expressions shall apply (save where the context otherwise requires):

- 1.1 “Agreement” means the agreed terms and conditions of business between the Customer and Pritchard Consulting as set out in the MSA, Pritchard Consulting Addendum (if applicable), the SOS, the applicable Service Terms & Conditions for the Service that is provided and defined under the SOS (for example “Managed Services”) and all Schedules and Annexes contained therein
- 1.2 “Billing rates means Pritchard Consulting’s personnel charges from time to time and which form the basis for the time element of time and materials charges levied by Pritchard Consulting
- 1.3 “Customer” means the business, partner or person as defined in the Sales Order Sheet
- 1.4 “Charges” means the Managed Services Fee, the Consultancy Fees and any other charges payable by the Customer to Pritchard Consulting’s pursuant to this Agreement.
- 1.5 “Commencement Date” means the date from when the beginning of the Initial Term is measured, as defined under Term and Termination in the MSA.
- 1.6 “Confidential Information” means all know-how, experience, drawings, designs, circuit diagrams, flow charts, computer programs and all other technical information which might reasonably be of commercial interest to a party hereto together with all other information which is of a confidential nature and relates to the business, products, customers, suppliers or pricing of a party hereto (including proposed or anticipated products, customers, suppliers or pricing) and Confidential Information shall include (without limitation):
  - 1.6.1 in the case of Pritchard Consulting’s Confidential Information, the HA Materials; and
  - 1.6.2 in the case of the Customer’s Confidential Information, all Customer Data.
- 1.7 “Consultancy Services” include:
  - 1.7.1 “Ad Hoc Consultancy Services” which means such consultancy services (if any) as Pritchard Consulting agrees to provide and the Customer agrees to accept during the Term; and
  - 1.7.2 “Specified Consultancy Services” which means those consultancy services which are specified Schedule 2 - The Services Order Sheet (“SOS”)
- 1.8 “Consultancy Fees” means:
  - 1.8.1 “Time Based Consultancy Fees” which are charged on a time basis applying the current Billing Rates of Pritchard Consulting from time to time (details of current rates are available from Pritchard Consulting on request at any time); and
  - 1.8.2 “Fixed Price Consultancy Fees” which means a fixed fee for the Specified Consultancy Services as specified in Schedule 2 - The Services Order Sheet (“SOS”).

- 1.8.3 Consultancy Fees are exclusive of:
- a3 Any products or services not expressly provided for in The Services Order Sheet (“SOS”)
  - b3 Reasonable Expenses, (which includes Travel Expenses, Accommodation, Subsistence and Travel Time)
  - c3 VAT or other Taxes as maybe imposed
- 1.9 “Customer Data” means all data processed by Pritchard Consulting or provided to Pritchard Consulting for processing or otherwise processed as part of the Services including, but not limited to, data generated by the website from visitor input.
- 1.10 “Customer Equipment” means the hardware and software which the Customer is required to have in use in order to use and enable the Services to be provided in accordance with this Agreement.
- 1.11 “HA Proprietors” means all persons who own the Intellectual Property Rights in the Third Party Software or who have licence rights in the Software or any part or parts thereof and which licence rights are superior to the licence rights of Pritchard Consulting and the Customer.
- 1.12 “Third Party Software” means the software programs or components thereof used by Pritchard Consulting’s to provide the License which is specified as the Licensed Application in Schedule 2 - The Services Order Sheet (“SOS”) as the same may be modified, added to or replaced during the Term.
- 1.13 “Index” means the Retail Price Index in the Monthly Digest of Statistics published by the Central Statistical Service of HM Government (or, if the same is no longer published, then the most appropriate alternative source of similar data).
- 1.14 “Initial Period” means the minimum contracted period of a Service as defined within Schedule 2 - The Services Order Sheet (“SOS”) measured from the Service Commencement Date.
- 1.15 “Intellectual Property Rights” means all copyrights, patents, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same.
- 1.16 “Licensed Application” means the Pivotal Finance System or other such licensed software application as set out in Schedule 2 - The Services Order Sheet (“SOS”)
- 1.17 “Managed Services Fee” means the fee payable for the provision of the Licensed Application or additional support services as set out in the Schedule 2 - The Services Order Sheet (“SOS”).
- 1.18 “Month” means a calendar month and “monthly” shall be construed accordingly.
- 1.19 “Pritchard Consulting” means Pritchard Consulting Limited, who’s registered office is 15 The Priory Billericay Essex CM12 ORD. REG : 2623242

- 1.20 “Perpetual Licence” means a perpetual, royalty free, non-exclusive licence granted by Pritchard Consulting to the Customer where Pritchard Consulting retains all Intellectual Property Rights in the relevant materials. The terms of the Perpetual Licence shall entitle the Customer to use, copy, adapt, develop and modify the same for the purpose of the Customer’s personal use of the Licensed Application (regardless of whether such use is through the Licensed Application provided by Pritchard Consulting, through another Managed Service Provider or in house) and such licence shall survive the termination of this Agreement.
- 1.21 “Representative” a person defined by the Customer or Pritchard Consulting as defined in clause 14.
- 1.22 “Subscriber Access License, (SAL)” means a license allocated to an individual user entitling them to use the Licensed Application. You must obtain a SAL for each unique individual who is authorised to access or otherwise use the Licensed Application or functionality of the Third Party Software. One (1) SAL is required for each such unique individual. Each such User must use a unique User ID when accessing the Licensed Application. A User for whom a SAL is obtained is an “Authorized User.”
- 1.23 “Subscriber Access Fee” means the fee payable on a monthly basis for each Subscriber Access License.
- 1.24 “Service Levels” means the levels of performance to which the System and the Support Services are to be provided to the Customer by Pritchard Consulting as set out in Schedule 3 Service Terms and Conditions.
- 1.25 “Service Level Agreement” means the provisions of Schedule 3 Service Terms and Conditions.
- 1.26 “Services” means the services to be provided by Pritchard Consulting hereunder as the same may be modified, added to or replaced during the Term and in accordance with the provisions of this Agreement and comprising:
- 1.26.1 “Licensed Application” the services as described by that name in Schedule 2 - The Services Order Sheet (“SOS”).
- 1.26.2 “Managed Applications” the services as described by that name in Schedule 2 - The Services Order Sheet (“SOS”) for which a SAL has been provided
- 1.26.3 “Support Services” the services as described by that name in Schedule 2 - The Services Order Sheet (“SOS”).
- 1.26.4 “Consultancy Services” as defined above.
- 1.27 “Site(s)” means the address[es] set out in Schedule 2 - The Services Order Sheet (“SOS”) and such further or alternative addresses as may be nominated by the Customer being the locations to or at which any Services are to be provided by Pritchard Consulting.
- 1.28 “System” means the Licensed Application, the Hardware and the Network as the same operate together in the provision of the Licensed Application.

- 1.29 “Licensed Application Regulations” means regulations introduced by Pritchard Consulting from time to time for the better management of the Licensed Application and Support Services and which may include (but are not limited to):
  - 1.29.1 defining minimum specifications for equipment used by the Customer to interface with the Licensed Application (including, but not limited to, routers, firewalls and PC’s);
  - 1.29.2 usage restrictions to prevent unreasonable loads being imposed on the Licensed Application;
  - 1.29.3 regulations to ensure that security and integrity of the Licensed Application is maintained and including regulations which arise from the need to comply with regulations of any data centre facility or third party engaged by Pritchard Consulting in connection with the System; and
  - 1.29.4 regulations to ensure that any database or other applications which form part of the Licensed Application are used to the best effect and within their capacities.
- 1.30 “Term” means the effective term of this Agreement.
- 1.31 In addition to references in this Agreement, a reference to:
  - 1.31.1 "writing" or "written" includes faxes and email;
  - 1.31.2 "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assignees;
  - 1.31.3 “company” includes any company, corporation or other body corporate, wherever and however incorporated or established;
  - 1.31.4 "month" means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that, if there is no numerically corresponding day in the month in which that period ends, that period ends on the last day in that calendar month.

## 2. PROVISION OF SERVICES AND LICENSES

- 2.1 Pritchard Consulting agrees with effect from the Commencement Date in consideration of the payment of the Charges by the Customer to supply to the Customer:
  - 2.1.1 the Licensed Application,
  - 2.1.2 the Managed Applications
  - 2.1.3 the Support Services
  - 2.1.4 the Specified Consultancy Services (if any), and
  - 2.1.5 such Ad-Hoc Consultancy Services as the parties shall agree upon from time to time during the Term.
- 2.2 The Services shall be supplied:

## Pritchard Consulting Master Services Agreement

- 2.2.1 on a non-exclusive basis
  - 2.2.2 in accordance with the Service Level Agreements (where applicable) but subject to the Tolerances, and
  - 2.2.3 upon the terms and conditions of this Agreement.
- 2.3 In relation to the Consultancy Services Pritchard Consulting undertakes to:
  - 2.3.1 perform the same in a professional and diligent manner, and
  - 2.3.2 use its reasonable endeavours to ensure that while its staff are on the Customer's premises they conform to the Customer's normal codes of staff and security practice as notified to Pritchard Consulting by the Customer in writing; and
  - 2.3.3 use its reasonable endeavours to maintain continuity in the staff engaged to provide the Consultancy Services.
- 2.4 The Customer agrees that if, in the course of performing the Services, it is necessary or desirable for Pritchard Consulting to access or use any equipment, software or data of the Customer (or which is in the possession of the Customer) then the Customer grants to Pritchard Consulting a non-exclusive, royalty free licence, during the Term to use the same solely for the purpose of delivering the Services (including, without limitation and for the avoidance of doubt, Consultancy Services, Support Services, maintenance of the Licensed Application for delivery of the Services) and it is declared that Pritchard Consulting shall have no right to use the same for any other purpose or at any other time.
- 2.5 The following provisions apply to the Licensed Application and Managed Applications:
  - 2.5.1 Pritchard Consulting hereby grants to or will procure from the HA Proprietors for the Customer a non-exclusive, royalty free licence, during the Term to use the Licensed Application and any ancillary software solely for the purpose of using the Licensed Application in accordance with this Agreement and it is declared that the Customer shall have no right to use the same for any other purpose or at any other time.
  - 2.5.2 The Customer shall not (i) reproduce, duplicate, disseminate, copy, sell, rent, lease or loan or otherwise disclose any Licensed Application materials; (ii) electronically transmit any Licensed Application over a network except as necessary for the Customer's licensed use of the Licensed Application; (iii) use run-time versions of third-party products embedded in any Hosted Application, if any, for any use other than the intended use of that Licensed Application, (iv) except to any extent permitted by law, modify, disassemble, decompile, or reverse engineer any Licensed Application; (v) sublicense or transfer possession of any copy of any Licensed Application to another party, except, in each such case, with the prior written consent of Pritchard Consulting and the relevant HA Proprietor; or (vi) use any Licensed Application or Third Party Software in any way not expressly provided for by this Agreement.



- 2.5.3 Title to the Licensed Application shall not pass to the Customer. The Customer shall retain the copyright or proprietary rights notice of all the relevant HA Proprietors on all copies of the Licensed Application and any associated documentation including all such notices as are included on media or in documentation provided by such proprietors. The Customer shall acknowledge that the Licensed Application and Third Party Software are the property of the respective HA Proprietors.
- 2.5.4 The HA Proprietors disclaim all warranties, express or implied, in favour of the Customer and shall not be liable to the Customer for any damages, whether direct, indirect, incidental or consequential, arising from the use of the Licensed Application and Third Party Software.
- 2.5.5 At the termination or expiry of the Term the Customer shall discontinue use of the Licensed Application and Third Party Software and shall, at the option of Pritchard Consulting, destroy or return such components of the Licensed Application and Third party Software as shall be in its possession to Pritchard Consulting including all archival or other copies.
- 2.5.6 The HA Proprietors impose certain licence terms and conditions in relation to the use of the Licensed Application and Third Party Software Applications and to the extent that the same are relevant to the Customer the same are set out in Schedule 4. The Customer agrees with Pritchard Consulting, and for the benefit of the relevant HA Proprietor, to comply with those terms and conditions.
- 2.5.7 The Customer acknowledges that any HA Proprietor or Pritchard Consulting may at any time, and without notice, incorporate licence management software into the Licensed Application and Third Party software or other elements of the Services for the purposes of ensuring that licence rights are not exceeded.
- 2.5.8 The customer may not vary the total number of Authorised Users or Services by more than that specified in Schedule 2 - The Services Order Sheet ("SOS") in any calendar month without prior agreement from Pritchard Consulting.
- 2.5.9 If a minimum number of users or Services is specified in Schedule 2 - The Services Order Sheet ("SOS") this number applies for the Initial Period and any subsequent Term

### 3. DURATION

- 3.1 The Customer recognises Pritchard Consulting's pricing takes into account many factors including but not limited to: other commitments, initial costs, advance development, technical staffing, and administrative staffing. Strict adherence to Initial Period, minimum number of users and notice periods are of the essence.
- 3.2 This Agreement shall commence on the Start Date and shall (subject to the provisions for termination set out in clauses 17 and 18.3) continue for the Initial Period and thereafter until terminated by either party giving to the other not less than three (3) months notice in writing (any such notice to expire not earlier than the end of the Initial Period).

- 3.3 After expiry of the Initial Period, the Term shall be extended by 1 year and subsequently for each year on each anniversary of the commencement date, until terminated by either party upon written notice to be delivered not less than 90 days prior to the end of the Initial Period or any subsequent Term.

#### 4. CHARGES

- 4.1 The Customer undertakes to pay:
- 4.1.1 the Perpetual License fee
  - 4.1.2 the Subscriber Access Fee;
  - 4.1.3 the Time Based Consultancy Fees for any Ad Hoc Consultancy Services; and
  - 4.1.4 for the Specified Consultancy Services, the Fixed Price Consultancy Fees and/or the Time Based Consultancy Fees as provided in Schedule 2 - The Services Order Sheet ("SOS").
- 4.2 Pritchard Consulting shall send to the Customer an invoice in respect of the Specified Consulting Services in advance unless otherwise agreed.
- 4.3 Pritchard Consulting shall send to the Customer an invoice in respect of the Licensed Application and Managed Services monthly.
- 4.4 Pritchard Consulting may at its option invoice amounts due in respect of the Consultancy Fees either:
- 4.4.1 at monthly (or, in its discretion, longer) intervals, or
  - 4.4.2 from time to time in respect of any part or parts of the Consultancy Services which have been substantially completed.
- 4.5 If Schedule 2 - The Services Order Sheet ("SOS") states that a service may be terminated within the initial period or any extension thereof then at least 90 days notice must be provided.
- 4.6 All invoices are payable within 30 days after the date thereof unless otherwise agreed in writing.
- 4.7 All Fees shall be paid by the Customer in cleared funds and without deduction or set-off. In the event that the Customer is required to make international transfers, the Customer shall be solely responsible in respect of any additional bank charges incurred.
- 4.8 All Charges specified in the Agreement any SOS's are exclusive of VAT or similar taxes, upon presentation of a valid VAT invoice, pay any such VAT as appropriate.
- 4.9 All invoicing provided by Pritchard Consulting to the Customer shall be produced in accordance with the agreed SOS. The invoice shall be deemed to be correct and properly due unless, acting reasonably and in good faith, the Customer disputes the invoice or parts thereof within 14 days of the invoice date. If the Customer does not dispute any aspect of the invoice within the 14-day period, the invoice shall be deemed due for payment in accordance with the Payment Profile.

- 4.10 In the event that a Customer account becomes overdue for payment, Pritchard Consulting reserves the right to deny access (either physically or remotely) to the Licensed Application. Pritchard Consulting also reserves the right to serve in writing a 7-day notice of disconnection to the Customer's billing contact. Should payment not be received within the 7-day notice period, Pritchard Consulting reserves the right to take either or both of the following actions:
- 4.10.1 Suspend the Customer's account;
  - 4.10.2 Suspend any Licensed Application or Managed Services.
  - 4.10.3 Revoke entitlement to use software Licenses provided under this agreement.
- 4.11 Where a disconnection of Service has occurred as a result of a Customer's breach of the payment terms, a reinstatement/reconnection Fee of £199 will be applied to the Customer account. The Customer shall be required to pay in full the reconnection Fee in addition to full payment of all properly due amounts on the Customer account, prior to access or reconnection to the Customer's Service being granted.
- 4.12 Pritchard Consulting shall be entitled to charge the other interest in respect of the late payment of any sums due under this Agreement (as well after as before judgement) at the rate of 3 per cent per annum above the base rate from time to time of HSBC Bank plc from the due date therefor until payment.
- 4.13 Pritchard Consulting shall be entitled, 30 days prior to the expiry of the Initial Term or any then active Subsequent Term, to increase Charges for the Service's next Subsequent Term, upon providing the customer with 30 days notice.
- 4.14 Pritchard Consulting shall be entitled to increase the Subscriber Access Fee with effect of the first and each subsequent anniversary of the Start Date or on the 1<sup>st</sup> January by giving at least 30 days' prior written notice to the Customer. Pritchard Consulting shall be entitled to increase the Managed Fee or Subscriber Access Fee in line with any price increases imposed by the HA Proprietors.
- 4.15 Pritchard Consulting shall be entitled to increase the Managed Fee or Subscriber Access Fee in line with any additional services requested by The Customer.

## 5. TRANSFERRING STAFF

- 5.1 It is not intended that any staff be transferred from the Customer to Pritchard Consulting pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981 ('the Regulations').
- 5.2 The Customer shall remain liable for and shall indemnify Pritchard Consulting against all wages holiday pay employment benefit costs redundancy costs and unfair dismissal costs and awards in respect of all employees and former employees of the Customer.
- 5.3 Neither party during the term of this Agreement and for a period of 2 years after its expiry or termination howsoever caused shall solicit the other party's staff who have been employed or engaged in the provision of the Services or the performance of this Agreement. For the purposes of this clause 'solicit' means the soliciting of such person

with a view to engaging such person as an employee, director, sub contractor or independent contractor.

- 5.4 In the event that either party is in breach of clause 5 above then the party in breach shall pay to the other by way of liquidated damages an amount equal to 100% per cent of the gross annual remuneration (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to either party's ability to seek injunctive relief. This Clause 5 shall survive for a period of 2 years post the termination of this Agreement.

## 6. CHANGES TO THE SERVICES

- 6.1 The parties shall from time to time meet to review the manner in which the Services are being provided by Pritchard Consulting hereunder in accordance with the Service Level Agreement.
- 6.2 In the event that the Customer wishes to alter the Services (any such alteration being hereinafter referred to as 'an Amended Service') then it shall make a written submission to Pritchard Consulting setting out its requirements ("a Change Request") as defined in Schedule 1 – Change Control Procedure. The parties shall negotiate in good faith (but without legally binding obligation) and endeavour to agree terms for implementation of the Change Request including, but not limited to, any change to the managed Services Fee, Consultancy Fees or other Charges applicable, any variation to other terms of this Agreement and a time table for implementation of the Change Request.
- 6.3 In the event that terms to implement a Change Request are agreed the terms of such agreement shall be recorded in a written agreement ("a Change Request Form") signed by both parties and thereafter this Agreement will take effect subject to such amendments.
- 6.4 Pritchard Consulting shall be entitled to charge the Customer at Pritchard Consulting 's then current rates for investigating, reporting on and, if appropriate, implementing any Change Request.

## 7. SERVICE LEVELS

- 7.1 The most recent applicable Service Terms & Conditions for a Service provided by Pritchard Consulting to a Customer can be found at <http://www.pritchardconsulting/resources>. Each SOS shall be governed by the most recent version of the applicable Service Terms & Conditions at the point of acceptance of the SOS. For the avoidance of doubt, any SOS accepted by Pritchard Consulting and governed by previous Service Terms & Conditions shall continue to be governed by the previous Service Terms & Conditions until the Service is terminated or suspended.
- 7.2 Pursuant of Clause 7.1, Service Terms & Conditions in respect of Services provided shall be incorporated into Schedule 2 of this Agreement from time to time upon acceptance by Pritchard Consulting of an SOS that is agreed with the Customer. The applicable Service Terms & Conditions shall be determined by the Service selected in the "Service Type" section of the SOS. For the avoidance of doubt, Service Terms & Conditions for

Services that are not included within an accepted SOS are not incorporated into this Agreement until such time that an SOS acknowledging the Service type is agreed between the Parties.

- 7.3 Service Level Agreements shall only apply to the Support Services and do not apply to the Licensed Software, Consultancy Services, any supplemental services and any services that expressly exclude the Service Level Agreements (as stated in the specification sheet for such services).
- 7.4 The Customer shall only be entitled to Service Credits if, at the point of the Service, all correctly due invoices on the Customer account are paid in full.
- 7.5 Subject to Clause 7.4, the Customer must provide to Pritchard Consulting, within 30 days of the completion of the Service Outage, written notification of the Customer's intent to claim a Service Credit. In the event that the Customer fails to request the Service Credit within the allotted 30-day period, the Customer forfeits the right to make any such claim.
- 7.6 In the event that more than one SLA is breached in a specific location of Service delivery, the Customer shall only be entitled to request Service Credits in relation to the highest payable SLA.
- 7.7 For the avoidance of doubt, should the SLA of a subsidiary Service be breached due to the loss of an integral part of an interdependent Service, the Customer shall only be entitled to claim Services Credits for the one highest payable SLA and all other Service Credits shall become void. If two SLA's are breached in a specific location and both have equal value, only one SLA shall be payable and the second shall be deemed as void.

## 8. WARRANTIES AND INDEMNITIES

- 8.1 Pritchard Consulting warrants to and undertakes with the Customer that:
  - 8.1.1 Pritchard Consulting will use its reasonable efforts to provide the Services and to exercise reasonable care and skill and in accordance with the terms of this Agreement;
  - 8.1.2 Pritchard Consulting has full right power and authority to provide the Services to the Customer in accordance with the terms of this Agreement; and
- 8.2 The Customer acknowledges that it has assessed the Licensed Applications with the benefit of its own industry specialist advice and found it to be appropriate to its requirements.
- 8.3 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS CLAUSE 8, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. PRITCHARD CONSULTING DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PRITCHARD CONSULTING DOES NOT WARRANT THAT THE SYSTEM WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

- 8.4 NOT FAULT TOLERANT. THE SYSTEM MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE

## 9. CUSTOMER OBLIGATIONS AND WARRANTIES

- 9.1 The Customer is required at all times during the term to maintain the Customer Equipment in good order and working condition and to provide prior written notification to Pritchard Consulting of any changes to the same. At no time during the Term shall the Customer permit the Customer Equipment to fall below the specifications therefore contained in the First Schedule.
- 9.2 In the event that the Customer is in breach of its obligations under clauses 9.1, then:-
- 9.2.1 Pritchard Consulting cannot be held responsible should the Managed Services fail to comply with the Service Level Agreements as a result (directly or indirectly) of such Customer breach and no service credits will accrue on account thereof;
  - 9.2.2 Pritchard Consulting shall be entitled to charge the Customer for staff time engaged on rectifying any resulting problems at Pritchard Consulting standard charge rates for the time being; and
  - 9.2.3 Pritchard Consulting may terminate or suspend support in relation to the Licensed Application or Managed Services without prejudice to any pre-existing rights and obligations of either party.
  - 9.2.4 The Customer represents, warrants and undertakes that:
    - 9.2.5 it has and shall during the Term have the legal right and authority to place and use and have used any of its equipment as contemplated under this Agreement;
    - 9.2.6 it will use the Licensed Application and Managed Services and System only for lawful purposes and in accordance with this Agreement; and
    - 9.2.7 any software, data, equipment or other materials provided by the Customer to Pritchard Consulting or employed by the Customer in its use of or receipt of the Managed Services shall not infringe any Intellectual Property Rights of any third party and shall not be obscene or defamatory of any person and shall not violate the laws or regulations of any state which may have jurisdiction over such activity.
- 9.3 In the event of any breach of any of the foregoing representations or warranties, in addition to any other remedies available at law or in equity, Pritchard Consulting will have the right to suspend immediately any related Services if deemed reasonably necessary by Pritchard Consulting to protect the proper interests of Pritchard Consulting or its other customers. If practicable and depending on the nature of the breach, Pritchard Consulting may (in its absolute discretion) give the Customer an opportunity to cure. In such case once the Customer has cured the breach, Pritchard Consulting will promptly restore the Service(s).

## 10. PRITCHARD CONSULTING PROVIDED EQUIPMENT

- 10.1 On or prior to the Commencement Date, Pritchard Consulting shall deliver to the Customer the Pritchard Consulting Provided Equipment necessary to facilitate the Customer's use of the Licensed Application and Managed Services. The Customer shall not remove any such equipment from the location to which it is delivered without the prior written consent of Pritchard Consulting.
- 10.2 The Pritchard Consulting Provided Equipment shall always remain the property of Pritchard Consulting or its suppliers. The Customer shall have no right or interest in or to such equipment except as provided in this Agreement and shall hold it subject and subordinate to the rights of Pritchard Consulting or its suppliers.
- 10.3 The Customer shall comply with the following provisions in relation to the Pritchard Consulting Provided Equipment:
- 10.3.1 at the Customer's own expense, keep it free and clear of any liens or encumbrances of any kind (except any created by Pritchard Consulting) and indemnify and hold Pritchard Consulting harmless from and against any loss or expense caused by the Customer's failure to do so;
  - 10.3.2 give Pritchard Consulting immediate written notice of any attachment or judicial process affecting it or its ownership;
  - 10.3.3 not to remove, alter or destroy any labels on it stating that it is the property of Pritchard Consulting or a third party and allow Pritchard Consulting to inspect such equipment at any time;
  - 10.3.4 use it for the sole purposes of receiving or using the Services and to use the same in compliance with the manufacturer's or supplier's suggested guidelines and keep the same in good appearance and condition, other than normal wear and tear;
  - 10.3.5 keep it insured against fire, theft and all such other risks as are usual for equipment of that sort which is on commercial premises for its full replacement value as advised by Pritchard Consulting; and
  - 10.3.6 the Pritchard Consulting Provided Equipment shall be at the sole risk in all regards of the Customer during the Term and at all times until the same is returned to Pritchard Consulting in accordance with clause 10.4.
- 10.4 At the end of the Term (howsoever terminated or expiring) the Customer shall at its own cost return the Pritchard Consulting Provided Equipment to Pritchard Consulting (at its principal place of business or such other address as it shall nominate for the purpose) in good appearance and condition.

## 11. CUSTOMER PROVIDED EQUIPMENT

- 11.1 The Customer Provided Equipment shall always remain the property of the Customer or its suppliers.
- 11.2 Pritchard Consulting shall comply with the following provisions in relation to the Customer Provided Equipment:

- 11.2.1 at the Pritchard Consulting's own expense, keep it free and clear of any liens or encumbrances of any kind (except any created by the Customer) and indemnify and hold The Customer harmless from and against any loss or expense caused by the Pritchard Consulting's failure to do so;
- 11.2.2 give the Customer immediate written notice of any attachment or judicial process affecting it or its ownership;
- 11.2.3 not to remove, alter or destroy any labels on it stating that it is the property of the Customer or a third party and allow the Customer to inspect such equipment at any time;
- 11.2.4 use it for the sole purposes of receiving or using the Services and to use the same in compliance with the manufacturer's or supplier's suggested guidelines and keep the same in good appearance and condition, other than normal wear and tear;

## 12. INSURANCE

- 12.1 The Customer shall be solely responsible for, and shall ensure that it has adequate insurance levels in place with a reputable insurer, to cover any loss or damages of the Customer that may arise as a result of the provision or lack of provision of Pritchard Consulting Services to the Customer. For the avoidance of doubt, any liability in relation to any short fall in Customer insurance levels shall be the sole responsibility of the Customer. Furthermore, the Customer waives all claims and rights of recovery by subrogation against Pritchard Consulting and its representatives.
- 12.2 The Customer shall also ensure that it holds suitable insurance for (including but not limited to) any loss or damage caused to Pritchard Consulting Service Equipment, any facility that the Customer's equipment may reside in or to Pritchard Consulting employees due to an act of negligence or default of the Customer, its employees or agents or caused by any malfunctioning of Customer provided equipment
- 12.3 The Customer shall be solely responsible for, and shall ensure that it has adequate insurance levels in place with a reputable insurer, to cover any loss or damages of the Customer that may arise as a result of the provision or lack of provision of Pritchard Consulting Services to the Customer. For the avoidance of doubt, any liability in relation to any short fall in Customer insurance levels shall be the sole responsibility of the Customer. Furthermore, the Customer waives all claims and rights of recovery by subrogation against Pritchard Consulting and its representatives.

## 13. LIMITATION OF LIABILITY

- 13.1 (CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 13).
- 13.2 The following provisions set out Pritchard Consulting's entire liability (including any liability for the acts and omissions of its employees, officers, agents or sub-contractors) to the Customer in respect of:
  - 13.2.1 any breach of its contractual obligations arising under this Agreement; and



- 13.2.2 any representation, statement or tortuous act or omission including negligence arising under or in connection with this Agreement or the subject matter of it.
- 13.3 Pritchard Consulting's liability to the Customer shall not be limited in respect of death or injury resulting from Pritchard Consulting own negligence or that of its employees agents or sub-contractors.
- 13.4 Subject to the provisions of clause 13.3 above Pritchard Consulting entire liability shall be limited to damages of an amount equal to:
- 13.4.1 £1,000 in the case of any Pritchard Consulting Breach falling within clause **Error! Reference source not found.** above; and
- 13.4.2 in the case of any other Pritchard Consulting breach an amount equal to the monthly Managed Service Fee; and
- 13.4.3 £1,000 in the aggregate during the Term.
- 13.5 Pritchard Consulting shall not be liable to the Customer in respect of any loss of profits, goodwill, loss of or need to reconstitute data or any type of special, indirect or consequential loss, account for profits or wasted management time even if such loss was reasonably foreseeable or Pritchard Consulting had been advised of the possibility of the Customer incurring the same and whether or not the same arises out of the negligence of Pritchard Consulting.
- 13.6 Pritchard Consulting shall not be liable in relation to any damages to Customer equipment.
- 13.7 Should any limitation or provision contained in this Clause 13 be held invalid under any applicable statute or rule of law it shall to that extent be deemed omitted from the Agreement.
- 13.8 Subject to Clause 13.3, Pritchard Consulting shall not be liable for:
- a) loss of profit; or
  - b) loss of business; or
  - c) any loss or depletion of goodwill and/or similar losses; or
  - d) loss of goods; or
  - e) loss of contracts; or
  - f) loss of use; or
  - g) anticipated savings; or
  - h) corruption or loss of data, software or general information;
  - i) any special, indirect, consequential or economic loss, costs or damages, charges or expenses.
- 13.9 If a number of Pritchard Consulting breaches arise from substantially the same set of circumstances or give rise substantially to the same loss then they shall be regarded as

only one Pritchard Consulting breach for the purposes of clause **Error! Reference source not found.**

- 13.10 Nothing in this clause 13 shall confer any right or remedy upon the Customer to which it would not otherwise be entitled.
- 13.11 This clause 13 shall confer rights on Pritchard Consulting employees, officers, agents and sub-contractors who shall not be liable to the Customer (whether in tort, contract or otherwise) in any case where Pritchard Consulting does not have such liability.
- 13.12 Notwithstanding any other provision of the Agreement, the Customer agrees that no proceedings shall be commenced against Pritchard Consulting under the Agreement more than 6 months after the event.

#### 14. SUPERVISION OF THE SERVICES

- 14.1 Pritchard Consulting and the Customer shall each nominate a Representative and a deputy for such Representative each of whom shall be authorised to make decisions relating to the Services and who shall be responsible for:
  - 14.1.1 organising all meetings and actions provided for in Schedule 2 hereto; and
  - 14.1.2 providing and/or allowing access to (subject to the provisions in respect of confidentiality set out in clause 17 below) all information and documentation to which Pritchard Consulting or the Customer (as the case may be) and/or their agents sub-contractors or professional advisors are entitled pursuant to this Agreement.
- 14.2 Each party shall notify the other in writing of any change in the identity of its Representative or deputy during the Term.

#### 15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 IPR RIGHTS IN THE LICENSED APPLICATIONS. The parties hereby agree that the Customer shall not acquire any Intellectual Property Rights whatsoever in respect of the Licensed and Hosted Applications save for the licence granted by clause 2.5.
- 15.2 CUSTOMER'S IPR RIGHTS. The Customer shall retain any Intellectual Property Rights in:
  - 15.2.1 any copyright materials of the Customer which may be included within or used in connection with the Services including, without limitation, logos, graphics and user-viewable text materials which are specific to the Customer or its brands;
  - 15.2.2 any adaptations or modifications to the Licensed Applications or code applicable to the Licensed Application which the Customer has created (or which have been created for the Customer otherwise than by Pritchard Consulting) or its representatives.
- 15.3 CUSTOMER'S PERPETUAL LICENCE. Pritchard Consulting shall retain any Intellectual Property Rights and shall grant to the Customer a Subscription or Perpetual Licence in respect of any of the following which have or may hereafter be created for the Customer by Pritchard Consulting:

- 15.3.1 any adaptations or modifications to the Licensed Application or code applicable to the Licensed Application (including, but not limited to, UAT test scripts);
  - 15.3.2 Any database design;
  - 15.3.3 Any visual and graphical elements of the designs originated by Pritchard Consulting for the Customer including, but not limited to, elements of “look and feel” (but excluding the items specified in clause 15.2.1) and
  - 15.3.4 Any other works or materials which are the subject of any Intellectual Property Rights and which are produced by Pritchard Consulting for the Customer in the course of performing the Consultancy Services.
- 15.4 Any other works or materials which are the subject of any Intellectual Property Rights and which are produced by Pritchard Consulting for the Customer in the course of performing the Consultancy Services.
- 15.5 Pritchard Consulting’s IPR RIGHTS. Save as specifically provided for in clauses 15.2 and 15.3 above Pritchard Consulting shall retain the Intellectual Property Rights in all materials created or originated by it in connection with or related to the provision of the Licensed Application hereunder and the Customer shall have no right or licence in respect thereof either during the Term or thereafter.
- 15.6 Pritchard Consulting WARRANTIES OF IPR. Pritchard Consulting warrants that it has all necessary right, title or interest to enable the Customer to use the Licensed Applications in accordance with this Agreement.
- 15.7 In the event that the Licensed Application or any component thereof infringes any Intellectual Property Rights of a third party Pritchard Consulting shall comply with its obligations under clauses 15.7 and 15.8 in full satisfaction of all its liabilities to the Customer for breach of the warranty in clause 15.5 and any other warranty in this Agreement which has the like effect.
- 15.8 Pritchard Consulting shall indemnify the Customer against all damages (including costs) that may be awarded or agreed to be paid to any third party in respect of any claim or action against the Customer resulting from breach of the warranty in clause 15.5.
- 15.9 Pritchard Consulting shall at its own expense endeavour to either procure
- 15.9.1 the right for the Customer to continue to use the Services at no further cost to the Customer, or
  - 15.9.2 make such alterations, modifications or adjustments to the Licensed Application as may be required to ensure that the same no longer constitutes an infringement or replace the Licensed Application (or any infringing component thereof) with a non-infringing substitute provided that, in any such case, there is no substantial loss of performance or functionality as a result thereof, or
  - 15.9.3 terminate this Agreement and the licence granted hereunder and return to the Customer the sums paid by the Customer in respect of the monthly Subscriber Access Fee (up to a maximum of 1 months’ Subscriber Access Fee) and

thereupon Pritchard Consulting shall have no further liability under this Agreement following such termination.

## 16. TERMINATION

- 16.1 For the purposes of this clause, the following events shall be deemed “acts of default”:
- 16.1.1 if the Customer fails to pay any of the Charges within 7 days of the due date;
  - 16.1.2 if a party commits any material breach of any term of this Agreement (other than one falling under clause 16.1.1 above) and which, in the case of a breach capable of being remedied, shall not have been remedied within 14 days of a written request by the other party to remedy the same;
  - 16.1.3 if a party shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with or assignment for the benefit of its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver, administrator or liquidator or similar officer is appointed in respect of the other party or all or any part of its business or assets or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or if any analogous step is taken in any jurisdiction.
- 16.2 If the Customer commits an act of default then Pritchard Consulting may:
- 16.2.1 Forthwith suspend the provision of the Licensed Application and Services hereunder (or any of them or any part of them) and no such suspension shall be deemed a breach of any term or provision of this Agreement or give rise to any service credits; or
  - 16.2.2 Suspend any and all Consultancy or Support services
  - 16.2.3 Terminate this Agreement by notice in writing forthwith.
  - 16.2.4 If Pritchard Consulting commits an act of default then the Customer may terminate this Agreement by notice in writing giving 14 day notice.

## 17. EFFECT OF TERMINATION

- 17.1 Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination including without limitation clauses 11, 13 and 15.
- 17.2 In the event of the termination or expiry of this Agreement:

- 17.2.1 the provisions of clause 2.5.5 shall apply and the Customer shall immediately cease to use the System and Licensed Application and Pritchard Consulting shall be under no further obligation to provide the same;
  - 17.2.2 Pritchard Consulting shall be under no further obligation to provide any Consultancy Services;
  - 17.2.3 if the Customer fails to return any property of Pritchard Consulting under its care and control on or prior to the termination date Pritchard Consulting shall be entitled and is hereby licensed to enter the Customer's premises and seize the same;
- 17.3 In the event that this Agreement is terminated by Pritchard Consulting under clause 16 then the Customer shall pay Pritchard Consulting:
- 17.3.1 Any third party cancellation charges related to the installation and/or termination of the Service; and the non-recurring charges (including any non recurring charges that were waived by Pritchard Consulting at the time of the Customer Order) for the cancelled Service plus:
  - 17.3.2 6 months of the Subscriber Access fee and Managed Services Fee.
  - 17.3.3 For Managed Service a sum by way of agreed and liquidated damages for Pritchard Consulting losses and damages by reason thereof such sum being equal to 50% for each Month or part of a Month between the date of such termination and the earliest date on which this Agreement could have expired or been terminated by the Customer in accordance with clause 3.

## 18. CONFIDENTIALITY

- 18.1 Each of Pritchard Consulting and the Customer hereby undertakes with the other (and, where applicable, for the benefit of the HA Proprietors) to:
- 18.1.1 keep confidential all Confidential Information;
  - 18.1.2 not without the other's written consent disclose the Confidential Information in whole or in part to any other person save those of its employees agents and sub-contractors involved in the provision or receipt of the Services and who have, and to the extent that they have, a need to know the same; and
  - 18.1.3 use the Confidential Information solely in connection with the provision or receipt of the Services and not for its own benefit or the benefit of any third party.
- 18.2 The provisions of clause 18.1 above shall not apply to the whole or any part of the Confidential Information to the extent that it is:
- 18.2.1 trivial or obvious;
  - 18.2.2 already in the other's possession without duty of confidentiality on the date of its disclosure;
  - 18.2.3 in the public domain other than as a result of a breach of this clause; or

18.2.4 to the extent that disclosure of such information may be required by any governmental agency or by operation of law and, in either such case, the party required to make such disclosure shall use reasonable endeavours to notify the other party of such requirement prior to making the disclosure.

18.3 Each of Pritchard Consulting and the Customer hereby undertakes to the other to make all relevant employees agents and sub-contractors aware of the confidentiality of the Information and the provisions of this clause 18.

## 19. FORCE MAJEURE

19.1 Neither party hereto shall be liable for any breach of its obligations hereunder, except in respect of payment, resulting from causes beyond the reasonable control of the party in default (or its sub-contractors) including but not limited to act of God, war, insurrection, riot, civil commotion, Government regulation, embargo, explosion, strike, labour dispute, illness, flood, fire or tempest (an 'Event of Force Majeure'). Any time limit or estimate for a party to perform any act hereunder shall be suspended during an Event of Force Majeure.

19.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

19.3 If a default due to an Event of Force Majeure shall continue for more than 30 days then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure but such termination shall not affect any pre-existing rights or obligations of either party.

## 20. WAIVER

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

## 21. NOTICES

Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post, email or by facsimile transmission (such email or facsimile transmission notice to be confirmed by letter posted within 12 hours) to the address or to the facsimile number of the other party set out in this Agreement (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery and (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile transmission or email) upon the expiration of 12 hours after dispatch.

Notices to	Email	
Pritchard Consulting	The contact details as defined in Schedule 2	

the Customer	The customer contact details as defined in Schedule 2	
--------------	---	--

## 22. PUBLICITY

No announcement or information concerning this Agreement or any ancillary matter shall be made or released or authorised to be made or released in any advertising publicity promotional or other marketing activities by either of the parties without the prior written consent of the other party.

## 23. INVALIDITY AND SEVERABILITY

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

## 24. ENTIRE AGREEMENT

- 24.1 Subject to Clause 23, this written Agreement (including the Schedules) and any other expressly incorporated document constitute the entire agreement between the parties hereto relating to the subject matter hereof. In entering into this Agreement neither party has relied on any representation made by the other party unless such representation is expressly included herein. Nothing in this Clause 24.1 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court, arbitrator or expert appointed under clause 28 may allow reliance on the same as being fair and reasonable.
- 24.2 No change, alteration or modification to this Agreement shall be valid unless in writing and signed on behalf of both parties hereto.

## 25. SUCCESSORS

This Agreement shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

## 26. ASSIGNMENT

The Customer shall not be entitled to assign this Agreement nor all or any of its rights and obligations hereunder.

## 27. SUBCONTRACTING

Pritchard Consulting shall be entitled to sub-contract the whole or any part of its obligations hereunder to any third party but shall remain liable as if it were performing the Services itself.

## 28. DISPUTES

- 28.1 All disputes or differences which shall at any time hereafter arise between Pritchard Consulting and the Customer in respect of the construction or effect of this Agreement or the rights duties and liabilities of the parties hereunder or any matter or event connected with or arising out of this Agreement (a 'Relevant Event') shall be referred to

such independent third party (the 'Third Party') as Pritchard Consulting and the Customer shall jointly nominate.

28.2 If Pritchard Consulting and the Customer shall fail to nominate a Third Party within 14 days of the date of occurrence of the Relevant Event then the Third Party shall be nominated at the request of either Pritchard Consulting or the Customer by the President for the time being of the British Computer Society.

28.3 The Third Party shall act as an expert and not as an arbitrator whose decision (including as to costs) shall, except in the case of manifest error, be final and binding upon Pritchard Consulting and the Customer.

## 29. VAT

29.1 Save insofar as otherwise expressly provided all amounts stated in this Agreement are expressed exclusive of value added tax and any value added tax arising in respect of any supply made hereunder shall on the issue of a valid tax invoice in respect of the same be paid to the party making such supply by the party to whom it is made in addition to any other consideration payable.

## 30. INDEMNITY – CONDUCT OF CLAIMS

30.1 In respect of any claim arising under any indemnity contained in this Agreement, the party indemnified under and claiming under the respective indemnity ('Indemnified Party') shall:

30.1.1 as soon as possible give to the party who has given the indemnity ('Indemnifier') written notice of the claim, circumstance or matter ('Claim') against which the Indemnified Party is claiming to be indemnified and all details of the Claim from time to time in the knowledge or possession of the Indemnified Party; and

30.1.2 where the Claim relates to a claim by any third party against the Indemnified Party, not without the prior written consent of the Indemnifier (which shall not be unreasonably withheld or delayed) admit liability or make any offer, promise, compromise, settlement or communication with the third party in respect of the Claim; and

30.1.3 where the Claim relates to a claim by any third party against the Indemnified Party, at the request of the Indemnifier and upon the Indemnifier providing to the reasonable satisfaction of the Indemnified Party security for all costs charges and expenses, surrender to the Indemnifier or its insurers on request the conduct in the Indemnified Party's name of the defence, settlement and/or counterclaim of the third party's claim (provided that the Indemnified Party shall be kept fully informed as to the conduct of such defence, settlement and/or counterclaim).

## 31. LAW

This Agreement shall be governed by and construed in accordance with English law and (subject always to clause 24) the parties submit to the exclusive jurisdiction of the courts of England and Wales.





## 32. SCHEDULE 1 - CHANGE CONTROL PROCEDURE

### Definitions

This Schedule 1 describes the processes under which a Service during a Service Term may be amended. In this Schedule 1 the following terms shall have the following meanings:

- 32.1 “Change” means any variation, revision or alteration to an active Service which shall be introduced in accordance with the Change Control Procedure as set out in this Schedule 1;
- 32.2 “Change Request” means a written request made by either Party for a Change or Adaptation, which will include, where appropriate, a feasibility assessment, impact on the Services, impact on the Fees, resource requirements, implementation timescales and any such other matter which is relevant to the proposed Change; “Change Request Form” means the document provided under this Schedule which shall be used to acknowledge the amendments agreed by both Parties of the Change;
- 32.3 “Change Request Manager” means the Customer’s duly authorised officer who is permitted to authorise amendments to the Service.
- 32.4 Unless stipulated within the Agreement, neither Party will introduce a Change to a Service during the Service Term unless in accordance with the Change Control Procedure set out in this Schedule
- 32.5 Each party shall act in good faith and will not unreasonably withhold or unduly delay its acceptance to any Change Request.
- 32.6 Pritchard Consulting will be responsible for progression of all Changes in accordance with timescales agreed between Pritchard Consulting and the Customer, subject to any timescales set out in any applicable law or documentation provided by a duly authorised regulatory body.
- 32.7 Pritchard Consulting will provide to the Customer on request, a summary of all Changes requested including a status report of Changes in progress.
- 32.8 Where a Change impacts on the Services, the cost of the Change may vary the Fees, provided that such Change and variation to the Fees has been agreed by both Parties in accordance with the Change Control Procedure.
- 32.9 Either Party may initiate a Change.

### Process

- 32.10 The Party requesting the Change will submit the Change Request to the other for the attention of the Customer Change Request Manager or the Pritchard Consulting manager, respectively. The Change Request may reference other documentation which contains details of the requirements for the Change.
- 32.11 Pritchard Consulting will assign a reference to the Change Request which shall then be used by both Parties in all correspondence between the Parties in respect of that Change Request.
- 32.12 The recipient party shall provide an initial response within 14 days.

## Pritchard Consulting Master Services Agreement

- 32.13 If the Change Request is agreed (with or without amendments), Pritchard Consulting shall prepare a draft Change Request Form, for approval by the Customer. If the Change Request is not agreed within 30 days, the parties shall meet to try to resolve the issue.
- 32.14 Only when the Change Request Form has been signed by both Parties shall the amendment constitute a variation to this Agreement.
- 32.15 Either Party may refuse to authorise a Change Request from the other if the Change proposed is not considered reasonable or practicable. A decision to reject a Change Request by either Party shall be accompanied by supporting justification in writing.
- 32.16 Pritchard Consulting may refuse to authorise a Change Request (and such refusal shall be deemed to be a reasonable ground for refusal) where;
- a) the Customer's intent is to reduce the value of the Agreement within the Initial Term or any active Subsequent Term; or
  - b) in Pritchard Consulting sole opinion, such proposed Change will detrimentally affect other Customers or Pritchard Consulting ability to provide the Service.
- 32.17 Pritchard Consulting and the Customer will work together to manage the Change and any subsequent

**Example Change Request Form**

Company	ABC Company	Customer No.	1234
Change Request Detail			

Sales Order Schedule	
----------------------	--

**Amendment Details**

Sales Order Schedule	
Sales Order Schedule	
Start Date	Example 01/01/2000
Fee/Invoice Adjustment	

33. SCHEDULE 2 – SERVICE TERMS AND CONDITIONS

- 33.1 Service applicable Service Terms & Conditions shall be incorporated into the Agreement from time to time as agreed by the Parties pursuant of Clause 8.2.

34. SCHEDULE 2 – THE SERVICES ORDER SHEET

- 34.1 The Services Order Sheet shall be incorporated into the Agreement from time to time as agreed by the Parties pursuant of Clause 8.2.