

Telefónica Tech Master Products and Services Terms

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1 Definitions and Interpretation

- 1.1 The following are the terms and conditions under which Telefónica Tech supplies information technology products and services to the Customer. These MPS Terms will apply to all Orders as described in clause 1.2.
- 1.2 The Customer may agree to one or more Order Documents, either at the date of this Agreement or subsequently. Each Order Document will form a separate and distinct contractual agreement between the Telefónica Tech entity set out in the Order Document and the Customer on the terms set out in this Agreement (an "Order").
- 1.3 In this Agreement the following words and phrases will, unless the context otherwise requires, have the following meanings:

"Agreement"	means the terms and conditions corresponding to each Order, as set out in clause 2.1.
"Applicable Law"	means as applicable and binding on the Customer, Telefónica Tech and/or the Agreement: (a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party or this Agreement is subject and/or in any jurisdiction that the services under this Agreement are provided to, or in respect of, for; (b) the common law and laws of equity as applicable to the parties from time to time; (c) any binding court order, judgment, or decree; or (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business.
"Assumptions"	any assumptions that Telefónica Tech has made when scoping the Service, as set out in the Order Documents.
"Background IPR"	any Intellectual Property other than Foreground IPR owned by or over which a Party has rights which is expressly made available by the Customer or the Supplier under this Agreement.
"Bribery Laws"	means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments, and regulations in relation to bribery or corruption.
"Business Day"	means any day which is not a Saturday, Sunday or public holiday in London.
"Charges"	means all Fees, Reimbursable Expenses and other sums that are for the account of the Customer that are, or become, payable to Telefónica Tech (whether for itself or any third-party) at any time under the Agreement together with any additional sums which may be provided for in the Agreement or the relevant Service Schedule and payable by the Customer.
"Confidential Information"	means all confidential information (however recorded, preserved or disclosed) of a party or its Group Company including but not limited to: (a) this Agreement; (b) any information that would be regarded as confidential by a reasonable businessperson relating to:

	<p>(i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of the Disclosing Party's Group Company; and</p> <p>(ii) the operations, processes, product information, know-how, technical information, financial information, designs, trade secrets or software of the Disclosing Party or of the Disclosing Party's Group Company; and</p> <p>(c) any information that is labelled as such</p> <p>(d) any information, findings, data or analysis derived from Confidential Information;</p> <p>but not including any information that:</p> <p>(e) is or becomes generally available to the public other than as a result of its disclosure by the Recipient in breach of this agreement or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known will nevertheless be treated as Confidential Information); or</p> <p>(f) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or</p> <p>(g) the parties agree in writing is not confidential or may be disclosed; or</p> <p>(h) is independently developed by the receiving party, which independent development can be shown by written evidence; or</p> <p>(i) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.</p>
“Control”	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company.
“COTS Software”	commercially-available-off-the-shelf-software and/or SaaS agreements re-sold by Telefónica Tech.
“Customer Data”	means all data, information, and other materials in any form (including derivatives) relating to the Customer (and/or its customers) and which may be accessed, generated, collected, stored or transmitted by Telefónica Tech (or any Telefónica Tech contractor) in the course of the performance of any services.
“Customer Materials”	means any Customer software, Customer Data, Customer IPR, calculations, algorithms, methods, information, and other materials created or supplied by the Customer.
“Customer Obligations”	those Customer obligations set out in the Order Documents and this Agreement including, without limitation, any ‘dependencies’, ‘obligations’, ‘responsibilities’, and the provisions of clause 4.
“Customer”	means the party described as the customer and set out in the Order Documents.
“Data Protection Laws”	has the meaning given to it in the Data Protection Schedule.

“Data Protection Losses”	means all liabilities, including all: (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses, and damages (including relating to material or non-material damage); and (b) to the extent permitted by Applicable Law: (i) administrative fines, penalties, sanctions, liabilities, or other remedies imposed by a Supervisory Authority; (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and (iii) the reasonable costs of compliance with investigations by a Supervisory Authority.
“Data Protection Schedule”	means the schedule available at https://info.telefonicatech.uk/termsconditions with the reference set out in the Order.
“Disclosing Party”	means a party to this agreement which discloses or makes available directly or indirectly Confidential Information.
“Fees”	means the fees and subscriptions for the Services and any goods supplied levied by Telefónica Tech on the Customer and described in clause 14.2.
“Force Majeure Event”	means an event of the type specified in clause 22 below.
“Foreground IPR”	any and all Intellectual Property Rights arising from, made, conceived, generated, developed or first reduced to practice (in whole or in part) by a party in connection with this Agreement.
“Group Company”	means each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company and “Group Companies” will be interpreted accordingly.
“Inappropriate Content”	means Viruses, or any material 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.
“Initial Term”	unless a different period is specified in the Order Documents, means an initial period of 12 months for a Managed Service.
“Intellectual Property Rights” or “IPR”	any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar

	nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions and "Intellectual Property" shall be construed accordingly.
"Liability"	means, when capitalised, liability in or for breach of contract, negligence, misrepresentation, tortious claim, restitution, Data Protection Losses, or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement. "Liable" will be construed accordingly.
"Managed Service"	means a recurring IT service, performed for a fixed term, typically (but always dependent on the scope of the Order Documents) to provide an aspect of and/or maintain and/or support the Customer's IT environment as a service.
"MPS Terms"	means that part of the Agreement called the 'Telefónica Tech Master Products and Services Terms'.
"Order Documents"	means the quotation, order form, statement of work, service definition document, support data sheet or other document that sets out the specific product or service being purchased by the Customer.
"Order"	has meaning given to it in clause 1.2.
"Products"	means goods and/or COTS Software.
"Professional Services"	means a one-off project as opposed to a recurring service, typically provided either on a fixed-price, fixed-scope basis; or on a time and materials basis.
"Public Cloud Provider's Terms"	means the terms and conditions on which the Public Cloud Provider makes a Public Cloud Service available to the Customer;
"Public Cloud Provider"	means the third-party provider of Public Cloud Services, named in the relevant Service Schedule.
"Public Cloud Service"	means virtual computing resources offered as a service by a Public Cloud Provider over the internet (or by other remote means).
"Recipient"	means a party to this agreement which receives or obtains directly or indirectly Confidential Information.
"Reimbursable Expenses"	means agreed incidental expenses reasonably incurred by Telefónica Tech in performing its obligations provided such additional expenses at least generally described in a Service Schedule, the Order Documents or as specified elsewhere in the Agreement.
"Renewal Period"	unless a different period is specified in the Order Documents, means a renewal period of 12 months for a Managed Service and 6 months in all other cases.
"Representatives"	means, in relation to the Recipient. (a) its officers and employees and those of its Group Company that need to know the Confidential Information for the purpose of enabling the Recipient to comply with its obligations of this Agreement;

	<p>(b) its professional advisers or consultants who are engaged to advise that party in connection with the Agreement;</p> <p>(c) its contractors and sub-contractors engaged by that party in connection with the Agreement; and</p> <p>(d) any other person to whom the Disclosing Party agrees in writing that Confidential Information may be disclosed.</p>
“RPI”	<p>the index “RPI All Items: Percentage change over 12 months: Jan 1987=100” calculated by the United Kingdom Office of National Statistics and published at:</p> <p>https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/czbh/mm23.</p>
“SaaS”	means a commercially available software-as-a-service agreement with a third-party licensor.
“Service Schedule”	means the relevant Service Schedule applicable to the Service being provided, available at https://info.telefonicatech.uk/termsconditions with the reference set out in the Order.
“Service”	means the services to be provided by Telefónica Tech, as set out in the relevant Order Documents, which may consist of a Professional Service, Managed Service or other service;
“Sub-Processor”	means another Data Processor engaged by Telefónica Tech for carrying out processing activities in respect of/on the Protected Data on behalf of the Customer;
“Support Service Provider”	means the third-party provider of Support Services;
“Support Services”	means a hardware or software remedial maintenance service;
“Supported Items”	has the meaning set out in clause 10.2.2;
“Telefónica Tech”	<p>one of the following legal entities as set out in the relevant Order Documents (and, in default of any such reference, Telefónica Tech UK Limited):</p> <ul style="list-style-type: none"> a) Telefónica Tech UK Limited, a company registered England and Wales (registered number 02563193) of East House, Newpound Common, Wisborough Green, West Sussex RH14 0AZ; b) Telefónica Tech Northern Ireland Limited, a company registered in Northern Ireland (registered number NI028408) of Concourse Building 3, Queens Road, Belfast, Northern Ireland, BT3 9DT; c) Telefónica Tech Ireland Limited, a company registered in the Republic of Ireland (registration number: 438959) of Unit 5B Unit 5H, Fingal Bay Business Park, Balbriggan Co. Dublin, Balbriggan, Dublin, Ireland; or d) Such other Group Company of one of the above as set out in the Order Documents.
“Term”	means the term of a Managed Service consisting of the Initial Period and Renewal Period.
“Variation”	means an amendment to any of the provisions in the MPS Terms or the Service Schedule. “Vary” will be interpreted accordingly.

“Virus”	any device or thing (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
“Warranty Provider”	means the individual or organisation who has agreed to provide the services described in the Warranty.
“Warranty”	means a third-party manufacturer warranty and/or support agreement, as further described in the Order Documents, which is intended to be an agreement between that third-party provider and the Customer (or its nominee).

- 1.4 In this Agreement references to any statute or statutory provision will, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted, or replaced.
- 1.5 Unless the context requires a different interpretation, references to any gender include all genders.
- 1.6 Headings in this Agreement are for convenience only and do not affect the construction of this Agreement and its interpretation.
- 1.7 A reference to a ‘party’ means either Telefónica Tech or the Customer and includes that party’s personal representatives, successors and permitted assigns.
- 1.8 A reference to a ‘person’ includes a natural person, corporate or unincorporated body (in each case regardless of having separate legal personality) and that person’s personal representatives, successors and permitted assigns.
- 1.9 A reference to a ‘company’ includes any company, corporation, or other body corporate, wherever and however incorporated or established.
- 1.10 Words and definitions in the singular include the plural and vice versa.
- 1.11 Any words that follow ‘include’, ‘includes’, ‘including’, ‘in particular’ or any similar words and expressions will be construed as illustrative only and will not limit the sense of any word, phrase, term, definition or description preceding those words.
- 1.12 There may be more than one agreement between the Customer and Telefónica Tech and the several agreements will be distinguished by their respective Order Documents.
- 1.13 Any reference to this Agreement will be taken to be a reference to a distinct and separate Order of which these terms form a part.
- 1.14 Any reference to writing, or to a ‘notice in writing’ includes email.

2 Application of Terms

- 2.1 Each Order comprises of the following documents (together, “the Agreement”):
 - 2.1.1 these MPS Terms;
 - 2.1.2 one or more Service Schedules (where applicable);
 - 2.1.3 one or more Order Documents;

- 2.1.4 Data Protection Schedule (applicable where Telefónica Tech processes personal data on the Customer's behalf);
- 2.1.5 any other document referred to in this Agreement and accordingly incorporated by reference.
- 2.2 Throughout the duration of the Agreement (including all extensions of it), the parties will always comply with each of the documents listed in clause 2.1 and the terms that they contain.
- 2.3 The terms set out in these MPS Terms apply to all Orders placed by the Customer with Telefónica Tech.
- 2.4 If the Customer and Telefónica Tech have not formally signed an Agreement then, unless alternative terms are referred to in the Order Documents, the MPS Terms and the Data Protection Schedule will apply to that order as if incorporated by reference within the Order or Order Documents.
- 2.5 If a conflict occurs between the clauses contained in the MPS Terms and any document referred to in this Agreement, the following order of precedence will apply:
 - 2.5.1 MPS Terms;
 - 2.5.2 Service Schedules;
 - 2.5.3 Order Documents;
 - 2.5.4 Data Protection Schedule;
 - 2.5.5 Any other document referred to in this Agreement.
- 2.6 The terms set out in these MPS Terms exclude all other terms and conditions that may purport to apply to the Agreement whatsoever. No terms or conditions endorsed upon, delivered with, or contained in any Customer order, acknowledgement of order, purchase order, specification or any other document will form part of this Agreement unless incorporated in this in this Agreement by an express reference in an Order Document. The scope and Fees set out in the Order Documents are inextricably bound to the terms of these MPS Terms and relevant Service Schedule such that any other terms that might purportedly apply to the Agreement, no matter if or when received by Telefónica Tech, will not apply to the Order.
- 2.7 The written or oral acceptance of any Order Document by the Customer; or the authorisation by the Customer of the services or delivery of the products; or the commencement of the services set out in an Order Document; constitutes the formation and conclusion of a contract for that Order, subject to this Agreement.
- 2.8 This Agreement does not constitute an agreement for the exclusive provision of any matter deliverable under its terms.
- 2.9 This Agreement does not prevent either party from entering into agreements for identical or similar goods and services with third parties, or from independently developing, using, selling, purchasing, or licensing materials, products or services which are similar to those provided under this Agreement.

3 Customer Warranties

- 3.1 The Customer warrants and represents that (and throughout the term of the Agreement, continues to warrant that):
- 3.2 it owns or has obtained valid licences, consents, permissions, and rights to use, and where necessary to licence to Telefónica Tech, any materials reasonably necessary for the fulfilment of all its obligations under this Agreement, including any third-party licences and consents for any Customer software; and any hardware or software supplied by the Customer will not cause Telefónica Tech to infringe the rights, including any IPR of any third-party;
- 3.3 it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Customer; and

- 3.4 it has the authority to grant any rights to be granted to Telefónica Tech under this Agreement, including any rights required for the provision of goods and services and otherwise in connection with this Agreement.

4 Customer Obligations

- 4.1.1 The Customer must:
- 4.1.2 comply with the terms of this Agreement and all Applicable Laws in a timely and efficient manner;
- 4.1.3 provide Telefónica Tech with all necessary co-operation in relation to this Agreement and, upon reasonable notice from Telefónica Tech, provide all necessary access to such information and premises as may be required by Telefónica Tech to supply any Product or Service in accordance with this Agreement;
- 4.1.4 provide assistance using its personnel as may be reasonably required by Telefónica Tech from time to time;
- 4.1.5 to pay all Charges in full without deduction or set-off on the due date, except if there is a dispute made in good faith over some or all Charges outstanding from time to time;
- 4.1.6 comply with its Customer Obligations; and
- 4.1.7 not unreasonably withhold or delay its approval where a Service Schedule or Order Document requires the approval of the Customer to any 'deliverable', 'milestone', 'acceptance test', 'project' or any other outcome specified in that document.
- 4.2 Clause 4.5 applies if:
- 4.3 the Customer fails to comply with its Customer Obligations; or
- 4.4 any Assumptions prove to be unfounded.
- 4.5 If either of the matters in clause 4.2 occur, Telefónica Tech is entitled to:
- 4.5.1 a reasonable extension of time for any Services delayed as a result;
- 4.5.2 such reasonable additional costs incurred by Telefónica Tech as a result; and
- 4.5.3 relief from failure to comply with its obligations arising from clauses 4.3 or 4.4.
- 4.6 The Customer is solely responsible for the legality, reliability, integrity, accuracy, and quality of the Customer Data.

5 Telefónica Tech Warranties

- 5.1 Telefónica Tech warrants that:
- 5.2 it has the full capacity and authority to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of Telefónica Tech;
- 5.3 it owns or has obtained valid licences, consents, permissions, and rights to enable it to comply with this Agreement and to use any of the IPR necessary for the fulfilment of all its obligations under this Agreement including for the Customer's use and receipt of goods and services;
- 5.4 it has and maintains appropriate registration under ISO 27001 and will notify the Customer of its material derogation from the standard; and
- 5.5 it will not breach the provisions of any of the licences, consents, permissions, and rights referred to in clause 5.3 or cause them to be breached.

6 Telefónica Tech Obligations

- 6.1 Telefónica Tech must:
- 6.1.1 comply with all Applicable Laws in the country in which Services are to be performed;

- 6.1.2 provide Services using reasonable skill and care; and
- 6.1.3 ensure that all personnel and sub-contractors used by Telefónica Tech in the performance of such services are adequately skilled and experienced for the activities they are required to perform.
- 6.2 The obligation at clause 6.1.2 will not apply to any consequence that is caused by the use by the Customer of a service contrary to Telefónica Tech's instructions or by the Customer's breach of the Customer Obligations under this Agreement.
- 6.3 Unless expressly provided for in this Agreement, all warranties, conditions, terms, undertakings, or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose (including section 14 of the Sale of Goods Act 1979), reasonable skill and care or ability to achieve a particular result are excluded from this Agreement to the fullest extent allowed by applicable law. The Customer agrees that such exclusion is reasonable given the obligations of Telefónica Tech under this Agreement.
- 6.4 Unless expressly specified otherwise, time shall not be of the essence for Telefónica Tech's obligations under this Agreement.

7 Supply of Products

- 7.1 This clause 7 will only apply where Telefónica Tech is supplying Products.
- 7.2 Telefónica Tech's quotation and its acceptance by the Customer (which may be by purchase order) constitutes the Order Document applicable to the supply of Products (without prejudice to clause 2.1).
- 7.3 A quotation for the supply of Products will be valid and capable of acceptance for the validity period stated in the quotation. If the quotation has not been accepted, it may be withdrawn prior to the expiry of the validity period.
- 7.4 The manufacturer or licensor of certain Products may require the Customer to adhere to certain flow-down terms. In such a case, those terms will be referenced in or sent with a quotation.
- 7.5 Delivery of physical Products will occur on arrival of the Products at the address set out in the Order Documents. COTS Software will be deemed delivered by Telefónica Tech upon supply of the licence key or login credentials.
- 7.6 Where the Customer purchases COTS Software, Telefónica Tech will procure the right for the Customer to enter into a licence agreement with the software licensor or SaaS provider. The Customer agrees to be bound by the terms of such licence agreement.
- 7.7 Risk in the Products will pass to the Customer upon delivery.
- 7.8 Physical Products will remain the sole and absolute property of Telefónica Tech as legal and equitable owner until such time as the Customer has paid Telefónica Tech for those Products. The Customer's right to use COTS Software will commence on payment for that piece of COTS Software.
- 7.9 Following delivery and until such time as the Customer becomes the owner of any physical Products, it will:
 - 7.9.1 store them on the Customer's premises in a manner which makes them readily identifiable as Products belonging to Telefónica Tech; and
 - 7.9.2 assume the risk in the Products and insure the Products for their full market value.
- 7.10 The Customer acknowledges that it is in possession of the Products solely as a fiduciary for Telefónica Tech until the Customer becomes the owner of the Products. If the Customer sells the Products, the Customer acknowledges that the entire proceeds of sale thereof are held in trust for Telefónica Tech.
- 7.11 Until such payment is received in full Telefónica Tech may, without prejudice to any of its rights, recover or resell any of the Products and may, upon reasonable notice, enter upon the Customer's premises or vehicle by its servants or agents for that purpose.

- 7.12 The Customer must not pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of Telefónica Tech, but if the Customer does so all sums owing by the Customer to Telefónica Tech will (without limiting any other right or remedy of Telefónica Tech) forthwith become due and payable.

8 Availability of Manufacturer Warranties

- 8.1 This clause 8 will only apply where Telefónica Tech is supplying a Warranty.
- 8.2 The Customer acknowledges that Telefónica Tech acts as a reseller of the Products. Telefónica Tech will assign to the Customer the benefit of any warranty, indemnity, licence or guarantee given by the supplier, licensor or manufacturer. The obligation to assign the benefit of such warranty, guarantee or indemnity will be the only warranty for Products given by Telefónica Tech.
- 8.3 Where the Customer purchases a Warranty:
- 8.3.1 Telefónica Tech will procure the right for the Customer (or such third-party as may be agreed in writing by Telefónica Tech) to enter into a direct contract with the Warranty Provider.
 - 8.3.2 the Customer will enter into a Warranty agreement with the Warranty Provider on the terms set out by the Warranty Provider.
 - 8.3.3 The Customer agrees that Telefónica Tech may register the Customer (or such other third-party as Telefónica Tech may agree in writing) as the end user or recipient of the Warranty.
 - 8.3.4 If the Customer intends that some third-party should be registered as the recipient of services under any Warranty, the Customer must inform Telefónica Tech in writing at or before the date of agreement of the relevant Order Document.
 - 8.3.5 Telefónica Tech's obligation to procure the Warranty under this clause 8 will be the only condition or warranty (express or implied) given by Telefónica Tech in relation to the same.
 - 8.3.6 Telefónica Tech will not be responsible for the performance of the Warranty by the Warranty Provider.

9 Supply of Professional Services

- 9.1 This clause 9 will only apply where Telefónica Tech is supplying Professional Services.
- 9.2 The parties will agree a 'statement of work' which, on agreement, will constitute the Order Document for a Professional Service. A 'statement of work' will set out the scope, timescales, deliverables, Fees, Dependencies, Assumptions, and risks for the Professional Services provided.
- 9.3 Unless the same is explicitly the responsibility of Telefónica Tech under the Order Documents, the Customer will at its own expense retain duplicate copies of all its data prior to and during performance of the Professional Service and insure against the accidental loss or damage to the same. The Customer is responsible for maintaining full security and back-up procedures for Customer Data.

10 Supply of Support Services

- 10.1 This clause 10 will only apply where Telefónica Tech is supplying a Support Service which it sub-contracts to a Support Service Provider.
- 10.2 The Order Documents will consist of:
- 10.2.1 Telefónica Tech's quotation;
 - 10.2.2 An inventory or schedule containing each item to be supported ("Supported Items") containing, inter alia, the applicable SLAs, the location of the Supported Item and the term of the Support Service; and
 - 10.2.3 Any other documents such as vendor data sheets which set out the scope, inclusions, and exclusions applicable to the Support Service.

- 10.3 The Service Schedule applicable to the relevant Support Service Provider (given reference '*Service Schedule – Support – [NAME]*'), if any, will apply.
- 10.4 If the terms of *Service Schedule – Support – Helpdesk Service* apply (in addition to any other Service Schedule). Telefónica Tech will receive calls from the Customer and log them with the Support Service Provider. If the terms of *Service Schedule – Support – Helpdesk Service* do not apply, the Customer will log calls with the Support Service Provider directly.
- 10.5 Telefónica Tech will use its reasonable endeavours to procure that the Support Service Provider meets the response and resolution SLAs set out in the Order Documents.
- 10.6 The provision of the Support Services does not imply that any errors will be successfully corrected or that Telefónica Tech or the Third Party will be able to assist the Customer in achieving any results from the Supported Services which are not technically feasible.
- 10.7 Any support provided outside of the scope of the Order Documents will be charged on a time and materials basis.
- 10.8 Support Services will be provided to the location set out in the Order Documents. Any alternative location must be agreed in writing by Telefónica Tech.
- 10.9 If the Support Service is not performed in accordance with the Agreement, Telefónica Tech will use reasonable endeavours to procure that the Support Service Provider will re-perform the Support Service. Procuring such re-performance will (subject to clause 18.1) be Telefónica Tech's sole liability for non-performance, poor performance, purported performance or otherwise of the Support Service.
- 10.10 The Support Service will commence following receipt of payment from the Customer.
- 10.11 If the Support Service Provider discontinues or cancels support for a Supported Item, Telefónica Tech may discontinue or cancel the same and will notify the Customer promptly following receipt of notification from the Support Service Provider.
- 10.12 Additional Customer Obligations
 - 10.12.1 The Customer must:
 - 10.12.1.1 notify the Helpdesk as soon as is reasonably practicable on becoming aware of an error involving a Supported Item;
 - 10.12.1.2 ensure that remote access as specified by Telefónica Tech from time to time is installed and operated in conjunction with relevant systems at the Customer's own cost and expense, for the purpose of assisting Telefónica Tech in its provision of the Support Services;
 - 10.12.1.3 always comply with the terms of any licence agreement/end-user licence for the Supported Item and for any software products or copyrighted material supplied by Telefónica Tech or the Support Service Provider;
 - 10.12.1.4 ensure that all applications, data, interfaces, tools, software, hardware, and equipment used in conjunction with the Supported Items, are properly maintained, are in good operating condition and are used in accordance with the manufacturer's operating instructions;
 - 10.12.1.5 ensure that the use, copying or modification of all computers and operating systems and any other hardware or software which Telefónica Tech is asked or permitted to undertake in connection with any the Support Service does not infringe any IPR or other right of any third-party;
 - 10.12.1.6 where applicable provide telecommunications and remote access to its systems as required by the Order Documents;
 - 10.12.1.7 ensure that its representatives co-operate fully with Telefónica Tech and the Support Service Provider in relation to the provision of the Support Services;

- 10.12.1.8 ensure the health and safety of personnel providing the Support Service while they are at the Customer's premises;
- 10.12.1.9 at all times use the Supported Items in accordance with any user manual and the manufacturer's reasonable directions as to the operation of the Supported Items;
- 10.12.1.10 ensure it always maintains secure back-ups of all data, information and software used by or in the custody or control of the Customer;
- 10.12.1.11 ensure that the Supported Items are used in a proper manner by competent trained persons only or by persons under their supervision;
- 10.12.1.12 be fully responsible for all applications, data, interfaces, hardware, and equipment within its control unless agreed otherwise;
- 10.12.1.13 Data Backup: to reconstruct lost or altered Customer Materials, Customer files, data, or programmes, maintain a separate backup system or procedure that is not dependent on the Supported Items;
- 10.12.1.14 implement temporary procedures or workarounds provided by Telefónica Tech while Telefónica Tech works on permanent solutions;
- 10.12.1.15 notify Telefónica Tech if the Customer uses products in an environment that poses a potential health or safety hazard to personnel carrying out the Support Service. Telefónica Tech may require the Customer to maintain such products under Telefónica Tech's supervision and may postpone service until the Customer remedies such hazards;
- 10.12.1.16 ensure that any individuals logging a ticket are generally knowledgeable and demonstrate technical aptitude in the relevant system administration, management and diagnostic testing;
- 10.12.1.17 have a representative present when Telefónica Tech provides support at the Customer's site; and
- 10.12.1.18 create and maintain a list of all Supported Items including: the location of the products, serial numbers, system identifiers, and coverage levels. The Customer will keep the list updated during the applicable Support Service term.

11 Support Services - Exclusions

- 11.1 Telefónica Tech is not obliged to provide Support Services in respect any error resulting from, or contributed to by, any of the following:
 - 11.1.1 any breach by the Customer of this Agreement;
 - 11.1.2 any modification, repair, rectification, maintenance, or addition to the Supported Item made by any person other than Telefónica Tech or the Support Service Provider;
 - 11.1.3 any fault in any equipment or in any software used in conjunction with the Supported Items;
 - 11.1.4 failure or fluctuation of electrical supplies, inadequate cooling, fire, flood, accidents, or other natural disasters;
 - 11.1.5 installation or use of the Supported Item other than for the purposes for which it is intended;
 - 11.1.6 installation or use of the Supported Item with other software or on equipment with which it is incompatible;
 - 11.1.7 Improper site preparation, or site or environmental conditions that do not conform to Telefónica Tech's site specifications;
 - 11.1.8 the Customer's non-compliance with the Order Documents or Service Schedule;
 - 11.1.9 Improper or inadequate maintenance or calibration;

- 11.1.10 the Customer or third-party media, software, interfacing, supplies, or other products;
 - 11.1.11 A Virus, infection, worm, or similar malicious code not introduced by Telefónica Tech;
 - 11.1.12 Abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by the Customer, or other causes beyond Telefónica Tech's control;
 - 11.1.13 the Customer's negligent act or omission;
 - 11.1.14 failure to notify Telefónica Tech of any error within a reasonable time of it first occurring; or
 - 11.1.15 the failure by the Customer to implement any update or upgrade to the recommended and made available by Telefónica Tech.
- 11.2 The Support Service does not include the delivery, return, replacement or installation of supplies or other consumable items (including magnetic media, print heads, toner, batteries) unless set out in the Order Documents.

12 Supply of Managed Services

12.1 Scope – Managed Services

- 12.1.1 This clause 12 will only apply where Telefónica Tech is supplying a Managed Service.
- 12.1.2 The parties will agree a 'service definition document' ("SDD") which, on agreement, will constitute the Order Document applicable to the Managed Service. The SDD will set out, inter alia, the scope, Charges, dependencies, SLAs and Term of the Managed Service.
- 12.1.3 The implementation and transition activities for a Managed Service will be dealt with as a Professional Service.
- 12.1.4 Where the scope of the Managed Service includes the provision of IT infrastructure as a service (for example, a virtual machine as a service; or a hypervisor as a service), the "*Service Schedule – Managed Infrastructure as a Service*" will apply.
- 12.1.5 Where the scope of the Managed Service includes the provision of a wide area network, the "*Service Schedule – WAN*" will apply.

12.2 Term – Managed Services

- 12.2.1 The commencement date and Initial Period of the relevant Order will be set out in the Order Documents. In the absence of any provisions to the contrary in those Order Documents, The Term of the Order will automatically be extended for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period, unless a party gives written notice to the other party, not later than 90 days before the end of the Initial Period or the relevant Renewal Period, to terminate the Order.

12.3 Additional Customer Obligations – Managed Services

- 12.3.1 The Customer must:
 - 12.3.1.1 not do any act that will infringe the rights of any third-party;
 - 12.3.1.2 not cause or permit the storage, distribution, or transmission of any Inappropriate Content through the Managed Service;
 - 12.3.1.3 not access or use all or any part of a Service to build a product or service which competes with the Managed Service;
 - 12.3.1.4 not resell a Managed Service, unless expressly permitted in writing by Telefónica Tech;
 - 12.3.1.5 use reasonable endeavours to prevent any unauthorised access to or use of a Managed Service;

- 12.3.1.6 promptly inform Telefónica Tech if it suspects or uncovers any breach of security or unauthorised use of a Managed Service, and will use all commercially reasonable endeavours to promptly remedy such breach;
- 12.3.1.7 agree to be bound by (and ensure that all individuals who have access to software are aware of and agree to be bound by) any end user licence agreement imposed upon the Customer by any third-party provider of software to Telefónica Tech for the provision of the Managed Service;
- 12.3.1.8 not reverse engineer, decompile or disassemble any third-party software used in the Managed Service;
- 12.3.1.9 not remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on third-party software used in the Services;
- 12.3.2 The Customer will indemnify Telefónica Tech against all damages, losses and expenses arising from any action or claim that the Customer Data or any other material stored or handled by Telefónica Tech for the Customer under a Managed Service constitutes Inappropriate Content.
- 12.3.3 The Customer is solely responsible for the legality, reliability, integrity, accuracy, and quality of the Customer Data.

12.4 Additional Provisions relating to Charges – Managed Services

- 12.4.1 Unless otherwise provided for in the Order Documents and as expressly provided for in clauses 12.4.2 and 12.4.4, the Fees set out in the Order Documents are fixed for the Term.
- 12.4.2 Telefónica Tech may by notice in writing vary the Fees for any Managed Service once in each 12-month period by RPI + 2% (unless an alternative rate of increase or increment is included in the Order Documents), commencing on the first anniversary of the commencement of the Initial Period and every anniversary of the Term thereafter.
- 12.4.3 for the period of twelve months starting with the index for the month immediately prior to the month of the Effective Date and then for each successive period of twelve months.
- 12.4.4 In addition to the annual increase set out in clause 12.4.2, Telefónica Tech may at any time pass onto the Customer increases in the Charges for the Managed Service that are levied by third-party providers such as software licence providers.

12.5 Exit

- 12.5.1 The parties may agree an exit plan prior to expiry of the Term of a Managed Service Order. The exit plan will set out activities which support an orderly, controlled transition of responsibility for the provision of the Managed Service to the Customer or its new service provider.
- 12.5.2 On termination of the Order, each party will comply with its obligations under the exit plan.
- 12.5.3 Telefónica Tech may charge for both production of the exit plan; and activities under the exit plan; on a time and materials basis at its then standard rates.

13 Resale of Public Cloud Services

- 13.1 Telefónica Tech will resell to the Customer the right to enter into an agreement with one or more Public Cloud Providers for the provision of a Public Cloud Service.
- 13.2 This Agreement (and the relevant Service Schedule) will apply from the date that the Public Cloud Service is made available for the Customer's use. Due to the online and flexible nature of Public Cloud Services, no further Order Documents are required.
- 13.3 The Service Schedule applicable to the relevant Public Cloud Provider (given reference 'Service Schedule – Public Cloud – [NAME]') will apply.

- 13.4 The Customer Acknowledges that Telefónica Tech does not own the Public Cloud Services or the rights to the same, except in so far as it is permitted to re-sell the same by the Public Cloud Provider under this Agreement.
- 13.5 The Customer Agrees to be bound by the Public Cloud Provider's Terms. The Public Cloud Provider's Terms will be an agreement between the Customer and the Public Cloud Provider and cannot be modified by Telefónica Tech, nor should they be treated as modified by anything in this Agreement.
- 13.6 The Customer's agreement to be bound by the Public Cloud Provider's Terms is for the benefit of the Public Cloud Provider and all such terms will, in addition to Telefónica Tech's contractual right to enforce this Agreement (and regardless of clause 33), be enforceable by the Public Cloud Provider.
- 13.7 Any service that Telefónica Tech provides to transition and/or migrate to a Public Cloud Service will be a Professional Service. Any management, monitoring or support of the Public Cloud Service provided by Telefónica Tech will be a Managed Service.
- 13.8 The Customer will indemnify and keep Telefónica Tech indemnified from and against any losses, damages, liability, costs (including legal fees) and expenses suffered or incurred by, awarded against, or agreed to be paid by, Telefónica Tech as a result of or in connection with any action, demand or claim arising as a result of:
 - 13.8.1 A breach of the Public Cloud Provider's terms;
 - 13.8.2 Unauthorised installation, use, access, copying, reproduction, and/or distribution of any portion of the Public Cloud Service by the Customer.
- 13.9 Telefónica Tech will not be responsible for, and will have no Liability for, the Public Cloud Provider's performance, non-performance, purported performance or otherwise of any Public Cloud Service, unless the same is caused by Telefónica Tech's breach of its obligations under this Agreement.
- 13.10 The Customer acknowledges that, even if it has been provided with an estimate of the Charges applicable for a Public Cloud Service, such service is typically provided on a consumption basis and the Customer will be charged for the Public Cloud Services consumed.

14 Charges and Payment

- 14.1 The Customer will pay the Charges to Telefónica Tech and perform its obligations under the Agreement in consideration for Telefónica Tech's performance of its obligations under the Agreement.
- 14.2 Unless otherwise specified in the Order Documents or Service Schedule, Telefónica Tech may invoice for the Products and Services as follows:
 - 14.2.1 **Non-Recurring Charges:**
 - 14.2.1.1 Products: On the date of delivery;
 - 14.2.1.2 Professional Services: at the end of each calendar month, in arrears for the proportion of the Services supplied in that calendar month;
 - 14.2.1.3 Support Services: for the term, in advance, on agreement of the Order Documents.
 - 14.2.2 **Recurring Charges:**
 - 14.2.2.1 Managed Services: at the end of each calendar month, in arrears, for the Services supplied in that calendar month;
 - 14.2.2.2 Public Cloud Services: at the end of each calendar month, in arrears, for the Services supplied in that calendar month;
- 14.3 All Charges are exclusive of any Value Added Tax or other applicable sales taxes, for which the Customer will be additionally liable at the applicable rate from time to time. In the case of supply to a Customer outside the UK the Customer will additionally be responsible for all import levies, customs duties or other similar taxes of whatever nature.

- 14.4 Telefónica Tech may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.
- 14.5 Invoices are payable in Pounds Sterling.
- 14.6 Telefónica Tech's Charges will be paid by the Customer (together with any applicable Value Added Tax or sales taxes) within 30 days of the date of Telefónica Tech's invoice unless otherwise agreed in the relevant Order Documents.
- 14.7 If Telefónica Tech has not received payment within seven days after the due date, and without prejudice to any other rights and remedies of Telefónica Tech:
 - 14.7.1 Telefónica Tech will be under no obligation to provide any Products or Services while the invoice(s) concerned remain overdue and unpaid;
 - 14.7.2 Telefónica Tech may revoke or suspend any third-party licences granted under this Agreement; and
 - 14.7.3 Telefónica Tech may charge interest on any outstanding amount due from the Customer at the rate of 4% above the base rate of the Bank of England from time to time in force, after as well as before judgment on any amount due from the Customer to Telefónica Tech from the date due for payment until the outstanding payment is received in full.
- 14.8 If payment of any invoice is not otherwise due it will become automatically due immediately on the commencement of any act or proceeding in which involves the Customer's solvency.
- 14.9 No payment will be deemed to have been received until Telefónica Tech has received cleared funds.

15 Indemnities

- 15.1 The Customer will indemnify and keep Telefónica Tech indemnified from and against any losses, damages, liability, costs (including legal fees) and expenses suffered or incurred by, awarded against, or agreed to be paid by, Telefónica Tech as a result of or in connection with any action, demand or claim that the proper use or possession of any Customer Materials, infringes the IPR of any third-party.
- 15.2 The Customer will indemnify and keep Telefónica Tech indemnified for all Data Protection Losses suffered or incurred by, awarded against, or agreed to be paid by, Telefónica Tech and any Sub-Processor arising from or in connection with any:
 - 15.2.1 non-compliance by the Customer with the Data Protection Laws;
 - 15.2.2 processing carried out by Telefónica Tech or any Sub-Processor pursuant to any Customer instruction that infringes any Data Protection Laws; or
 - 15.2.3 breach by the Customer of any of its obligations under clause 21.
- 15.3 The Customer will indemnify and keep Telefónica Tech indemnified from and against any losses, damages, liability, costs (including legal fees) and expenses suffered or incurred by, awarded against or agreed to be paid by, Telefónica Tech as a result of or in connection with any breach of clause 19 hereof.
- 15.4 The Customer will indemnify and keep Telefónica Tech indemnified from and against any third-party (for example, providers of a WAN service; data centre colocation providers; software licensors) losses, damages, liability, costs (including legal fees) and expenses arising from or in relation to: (i) the Customer's use of Inappropriate Content in relation to a Managed Service; or (ii) any misuse of a Managed Service contrary to the Customer's obligations in this Agreement.
- 15.5 The indemnities in this clause 15 and all other indemnities in any Schedule are subject to the following conditions:
 - 15.5.1 the indemnified party promptly notifies the indemnifier in writing of the action or claim;
 - 15.5.2 the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;

15.5.3 the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and

15.5.4 the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

15.6 The indemnities in clauses 15.1 to 15.3 and all other indemnities in any Schedule may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

16 Anti-Bribery

16.1 In this clause 16 the expressions 'adequate procedures' and 'associated with' will be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

16.2 Each party will comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:

16.2.1 all of that party's personnel;

16.2.2 all others associated with that party; and

16.2.3 all of that party's subcontractors;

16.3 involved in performing the Agreement so comply.

16.4 Without limitation to clause 16.2, neither party will make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

16.5 Each party must immediately notify the other as soon as it becomes aware of a breach of any of the requirements in this clause 16.

17 Anti-Slavery

17.1 Telefónica Tech and the Customer undertake, to each other that:

17.1.1 neither of them nor any of its officers, employees, agents, or subcontractors has:

17.1.1.1 committed an offence under the Modern Slavery Act 2015 (a MSA Offence);

17.1.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

17.1.1.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; and

17.1.2 each comply with the Modern Slavery Act 2015 and Telefónica Tech's anti-slavery and human trafficking policy in force and notified to the Customer from time to time.

17.2 Any breach of clause 17.1 by a party is a material breach of the Agreement and the innocent party may terminate the Agreement with immediate effect.

18 Limitation of Liability

18.1 Regardless of any other provision of this Agreement, the Liability of the parties cannot be excluded or limited in any way for the following:

18.1.1 death or personal injury caused by negligence (as such term is defined in the Unfair Contract Terms Act 1977);

18.1.2 fraud or fraudulent misrepresentation;

- 18.1.3 any breach of undertaking as to title, quiet possession and freedom of encumbrance implied by law;
- 18.1.4 a breach of clause 16 (Anti-Bribery) or clause 17 (Anti-Slavery);
- 18.1.5 any other losses which cannot be excluded or limited by Applicable Law.
- 18.2 The obligation to pay the Charges is excluded from all limitations of the Customer's Liability.
- 18.3 Subject to clause 18.4, a party's total aggregate Liability will not exceed maximum of 125% of the Charges paid or payable for the relevant part of the Order for which a claim is made during the 12 months immediately preceding the act or omission giving rise to the Liability.
- 18.4 The Liability under any indemnity that has a limitation of liability set out within its terms will be limited by that limitation of liability. If an indemnity states that the Liability arising under it is unlimited, then no limitation of liability applies to that indemnity. If an indemnity neither sets out a limitation of liability nor states that Liability under it is unlimited then the Liability under that indemnity will be limited in accordance with clause 18.3 and the amount of the Liability limited will form part of the aggregate limit set out in clause 18.3.
- 18.5 Neither party will be Liable to the other for any of the following regardless of whether it is, or they are, foreseeable, known, foreseen or otherwise or whether any damage or loss is direct, indirect, consequential, or otherwise:
 - 18.5.1 any Data Protection Losses not directly resulting from Telefónica Tech's breach of clause 21;
 - 18.5.2 any Data Protection Losses to the extent that they are contributed to or caused by any breach of this Agreement by the other party;
 - 18.5.3 loss of actual or anticipated profits;
 - 18.5.4 loss of business;
 - 18.5.5 loss of revenue or the use of money;
 - 18.5.6 loss of data (and/or undertaking the restoration of data or software restoration);
 - 18.5.7 loss of use;
 - 18.5.8 loss of production;
 - 18.5.9 loss of contracts;
 - 18.5.10 loss of opportunity;
 - 18.5.11 loss of savings, discount, or rebate (whether actual or anticipated);
 - 18.5.12 harm to reputation or loss of goodwill; and
 - 18.5.13 any special, indirect, or consequential loss.
- 18.6 Telefónica Tech will not be Liable for any of the following regardless of whether it is, or they are, foreseeable, known, foreseen or otherwise or whether any damage or loss is direct, indirect, consequential, or otherwise:
 - 18.6.1 any loss, damage, costs, expenses, or other claims for compensation arising from any instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer;
 - 18.6.2 any use of any service or product supplied by Telefónica Tech under this Agreement for any purpose for which the service or product is not designed; and
 - 18.6.3 any damages relating to the procurement by the Customer of any substitute goods or services.
- 18.7 All claims made by one party against the other under this Agreement, including under an indemnity, are subject to the Party claiming taking all appropriate steps to mitigate its loss.

- 18.8 Where the parties have agreed service credits or liquidated damages under the relevant Order Documents for certain Services, such service credits and/or liquidated damages will be the Customer's sole and exclusive right and remedy, and Telefónica Tech's only obligation and liability for the provision of any those Services including the lack, diminution, delay or unavailability of provision of the Services.
- 18.9 Telefónica Tech will not be liable for loss or damage arising out of:
- 18.9.1 the Customer's failure to comply with its Customer Obligations;
 - 18.9.2 delay by the Customer to act or provide any act, matter, or thing reasonably necessary for Telefónica Tech in the performance or delivery of the Product or Service
 - 18.9.3 the Customer's failure to provide Telefónica Tech with any or any adequate instructions for performance or delivery of the Product or Service;
 - 18.9.4 delay due to a Force Majeure Event.

19 Confidential Information

- 19.1 The Recipient will keep the Disclosing Party's Confidential Information confidential and will apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use, and except with the prior written consent of the Disclosing Party, will not:
- 19.1.1 use or exploit the Confidential Information in any way except for the purpose of complying with its obligations under this Agreement;
 - 19.1.2 directly or indirectly disclose or make the Confidential Information available in whole or in part to any third-party, unless expressly permitted by this Agreement;
 - 19.1.3 copy, scan, reduce to writing or otherwise record the Confidential Information unless strictly necessary for the purpose of complying with its obligations under this Agreement (and any such copies, reductions to writing and records will be the property of the Disclosing Party).
- 19.2 The Recipient may disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know this Confidential Information for the purpose of enabling the Recipient to comply with its obligations under this Agreement, so long as:
- 19.2.1 it informs its Representatives of the confidential nature of the Confidential Information before disclosure;
 - 19.2.2 it procures that its Representatives will, for any Confidential Information disclosed to them, comply with this Agreement as if they were the Recipient;
 - 19.2.3 if requested by the Disclosing Party, procure that any relevant Representative enters into a confidentiality agreement with the Disclosing Party on terms equivalent to those contained in this Agreement;
 - 19.2.4 it keeps a written record of the identity of those Representatives;
 - 19.2.5 takes all necessary precautions to ensure that the provisions of this clause 19 are enforced.
- 19.3 The Recipient is liable for the failure of any Representative to comply with the terms of this Agreement and for the actions or omissions of the Representative as if they were the failure, actions, or omissions of the Recipient.
- 19.4 The Recipient may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the Disclosing Party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 19.4, it takes into account the reasonable requests of the Disclosing Party in relation to the content of this disclosure.

- 19.5 Unless expressly provided by this Agreement, all Confidential Information disclosed will remain the property of the Disclosing Party.
- 19.6 Neither party will be responsible for any loss, destruction, alteration, or disclosure of Confidential Information caused by any third-party.
- 19.7 This clause 19 will survive termination of this Agreement, however arising.

20 Intellectual Property Rights

- 20.1 Unless expressly stated in this Agreement no Background IPR of either party is transferred or licensed as a result of this Agreement.
- 20.2 All Background IPR and IPR in any third-party products, services and deliverables will belong to and vest in Telefónica Tech that third-party and its licensors.
- 20.3 Without limitation to clause 20.2:
 - 20.3.1 Telefónica Tech grants to the Customer a non-exclusive, non-transferable, and royalty-free licence to use for its own benefit, to use in the Customer's business to enable the Customer to service its own customers, and to enable the Customer to make use of any products, services or deliverables and otherwise perform its obligations under this Agreement of:
 - 20.3.1.1 Background IPR; and
 - 20.3.1.2 Foreground IPR in all materials connected with any services or deliverables and in any material developed or produced in connection with this Agreement by Telefónica Tech, its officers, employees, subcontractors, or agents;
 - 20.3.2 the Customer grants Telefónica Tech a non-exclusive, non-transferable, and royalty-free licence to use the Customer Materials (and to permit any Telefónica Tech subcontractor to use the its Background IPR (and any Foreground IPR of the Customer) subject to the same restrictions as under this Agreement) to the extent necessary to enable Telefónica Tech to provide any products, services, and/or deliverables and otherwise perform its obligations under this Agreement.
- 20.4 The Customer will execute such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this clause 20.

21 Data Protection

- 21.1 The parties will always comply with the terms of the Data Protection Schedule.
- 21.2 Any notice or request by the Customer pursuant to the Data Protection Schedule will sent in accordance with clause 32.

22 Force Majeure

- 22.1 Subject to clause 22.2, neither party will be liable to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions, or accidents beyond its reasonable control including, without limitation:
 - 22.1.1 strikes, lockouts, or other industrial disputes (whether involving the workforce of Telefónica Tech or any other party);
 - 22.1.2 failure of a utility service or transport or telecommunications network;
 - 22.1.3 act of God, war, riot, civil commotion;
 - 22.1.4 malicious damage;
 - 22.1.5 compliance with any law or governmental order, rule, regulation or direction;
 - 22.1.6 accident;

- 22.1.7 breakdown of plant or machinery;
- 22.1.8 adverse weather conditions including but not limited to fire; flood; storm;
- 22.1.9 shortage of goods or an increase in price of goods to Telefónica Tech; or
- 22.1.10 default of suppliers or sub-contractors;
- 22.2 The relief given in clause 22.1 is subject to the incapacitated party notifying the other party in writing of the occurrence of an incapacitating event, its expected duration and that it takes all reasonable steps to resume performance of its obligations.
- 22.3 Clause 22.1.1 will not apply to strikes and lockouts where such action has been induced by the party so incapacitated.
- 22.4 If and when the period of such incapacity exceeds 45 Business Days, then either party will be entitled to terminate this Agreement (or the relevant Order Document affected) by notice in writing.

23 Termination

- 23.1 Either party may terminate the Order at any time by giving notice in writing to the other if:
 - 23.1.1 the other party commits a material breach of the Agreement, and that breach is not remediable; or
 - 23.1.2 the other party commits a material breach of the Agreement which is not remedied within 30 days of receiving written notice of such breach;
- 23.2 Without prejudice to any other right that Telefónica Tech may have to suspend performance of its obligations, Telefónica Tech may terminate the Order at any time by giving notice in writing to the Customer if:
 - 23.2.1 the Customer has failed to pay any amount due under the Agreement on the due date and such amount remains unpaid within 30 days after Telefónica Tech has given notification that the payment is overdue; or
 - 23.2.2 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Agreement or the Schedule or receive any benefit to which it is entitled;
 - 23.2.3 the Customer breaches clauses 3, 4, 7, 16, 17 or 19;
- 23.3 Telefónica Tech may terminate the Order at any time by giving notice in writing to the Customer if the Customer:
 - 23.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
 - 23.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if Telefónica Tech reasonably believes that to be the case;
 - 23.3.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
 - 23.3.4 has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertaking, assets, or income;
 - 23.3.5 has a resolution passed for its winding up;
 - 23.3.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 23.3.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 23.3.8 has a freezing order made against it;

- 23.3.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title to those items;
- 23.3.10 is subject to any events or circumstances analogous to those in clauses 23.3.1 to 23.3.9 in any jurisdiction;
- 23.3.11 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 23.3.1 to 23.3.10 above including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 23.4 Telefónica Tech may terminate the Order at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control.
- 23.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle Telefónica Tech to terminate the Order under this clause 23, it will immediately notify Telefónica Tech in writing.
- 23.6 On termination of any Order:
- 23.6.1 each party will return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party unless the same are required for fulfilment of another Order; and
- 23.6.2 Telefónica Tech may destroy or otherwise dispose of any of the Customer Data in its possession for the fulfilment of the Order unless Telefónica Tech receives a written request by the Customer prior to the date of termination to deliver the Customer Data to the Customer.
- 23.6.3 in meeting their respective obligations under clauses 23.6.1 and 23.6.2, each party will use its reasonable commercial endeavours to deliver its obligations to the other within twenty (20) Business Days of its receipt of the other party's written request.
- 23.6.4 Telefónica Tech is only obliged to comply with the Customer's request for the delivery of the Customer Data if the Customer has paid all Charges outstanding at and resulting from termination of this Agreement (whether due or not at the date of termination).
- 23.6.5 On receipt of the Customer Data, Customer will have fifteen (15) Business Days to restore and verify the data on a new environment. Telefónica Tech. If the backup provided by Telefónica Tech is shown to be defective, Telefónica Tech has a further fifteen (15) Business Days for data restore and verification. The Customer will pay all reasonable expenses incurred by Telefónica Tech in returning or disposing of Customer Data
- 23.7 The termination rights set out in this Agreement will be in addition to any rights to terminate the Agreement or a part of it as may be set out in an Order Document or Schedule.
- 23.8 The termination of this Agreement will not cause or be the cause for the termination of any other separate agreement between Telefónica Tech and the Customer; or any other Order; even if that agreement is made on the same terms as those contained in this Agreement.
- 23.9 On termination of a Managed Service Order for any reason and unless otherwise agreed in writing all licences (including, without limitation, third-party software licences) granted under this Agreement for that Managed Service Order Document will immediately terminate.
- 23.10 The following will not be affected or prejudiced by termination, howsoever arising:
- 23.10.1 The accrued rights and liabilities of the parties as at termination;
- 23.10.2 The continuation of any provision implicitly surviving termination;
- 23.10.3 Clauses 1, 3, 7, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, 33, 34, 35.

24 Assignment and Delegation

- 24.1 Telefónica Tech may not assign this Agreement, in whole or in part, without the Customer's prior written consent (such consent not to be unreasonably withheld or delayed) unless such assignment is to one of Telefónica Tech's Group Companies.
- 24.2 Telefónica Tech may subcontract any of its obligations or responsibilities under this Agreement. Telefónica Tech will remain responsible for performance by its subcontractors.
- 24.3 The Customer must not assign, subcontract, or encumber any right or obligation under the Agreement, in whole or in part, without Telefónica Tech's prior written consent (such consent not to be unreasonably withheld or delayed).

25 Severance

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

26 Waiver

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

27 Variation

- 27.1 No Variation will be of any effect unless the Variation is made in writing and signed by both parties. Variations may be made concerning the terms of this Agreement or any Order Document.
- 27.2 A variation to a Product or Service will be made by amending the Order Documents, following the process that may be set out in the Order Documents. If no process is set out in the Order Documents, amendments to Order Documents will be made in the manner set out in clause 2.7.

28 Set-Off

- 28.1 Neither Telefónica Tech nor the Customer may set-off any sums in any manner from payments due or sums received for any claim under this Agreement or any other agreement at any time.

29 Non-Solicitation

- 29.1 The Customer undertakes that it will not during or for a period of 12 months after the termination of this Agreement solicit or entice away or endeavour to solicit or entice away from Telefónica Tech any employee, contractor, agent, or consultant who has worked under this Agreement without the written consent of Telefónica Tech.
- 29.2 Regardless of clause 29.1, the Customer may employ or engage any person mentioned therein who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by

the other party or via an advertisement placed publicly by the other party (either in the press, social media, online or in trade and industry publications).

30 Dispute Resolution

- 30.1 If there is a disagreement in relation to this Agreement, either party may invoke this dispute resolution procedure by referring the matter to the director or head of its relevant business unit (or their appointed delegate) and notify the other party that it has done so. The directors or heads (or their appointed delegates) will meet or participate in a conference call with his or her counterpart on at least one occasion to try to resolve the matter.
- 30.2 If the matter is not resolved under the procedure in clause 30.1 within twenty (20) Business Days of the authorised representatives last having met or participated in a conference call (whichever is the last to occur), then the matter will be referred by either party to the Managing Directors (or equivalent level personnel) of the parties (or their appointed delegates) who will meet or participate in a conference call to try and resolve the matter within 20 Business Days of referral.
- 30.3 If the matter is not resolved under the procedure in clause 30.1 within twenty (20) Business Days of the last meeting or conference call (whichever is the last to occur) within that period (or if no meeting or call occurs within such period), then the matter may be referred to the courts.
- 30.4 The parties will not refer any dispute to the courts unless and until the dispute resolution procedures of this clause 30 have been followed and the deadline for settlement under clause 30 has expired except where it is necessary to do so for the purposes of applying for interim relief.
- 30.5 The parties' obligations under this Agreement will not be affected as a result of any matter being dealt with under the dispute resolution procedure set out in this clause 30 unless the parties conclude a Variation affecting the disputed matter and then only to the extent expressly set out in the Variation..
- 30.6 Nothing in this clause 30 will prevent either party applying to the courts for injunctive or other interim relief.

31 Entire Agreement

- 31.1 This Agreement, and any documents referred to in it, constitutes the entire agreement and understanding between the parties and supersedes any previous or contemporaneous agreement or understanding between them relating to the subject matter hereof. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 31.2 The Customer acknowledges and agrees that no representations were made prior to entry into this Agreement.
- 31.3 Regardless of the terms of clause 31.2, if any such representations are found to have been made (and subject to clause 18.4), the Customer asserts that it does not rely on, and will have no remedy for any statement, representation, warranty or understanding (whether negligently or innocently made) of any person unless such representation is expressly agreed in writing and signed by an authorized representative of Telefónica Tech.

32 Notices

- 32.1 A notice required or permitted to be given by either party to the other under this Agreement will be in writing, delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party and addressed:
- 32.2 In the case of the Customer to its registered office or principal place of business. Where a notice is permitted by e-mail, to the Customer contact that Telefónica Tech deems most appropriate for the subject matter of the notice;
- 32.3 In the case of Telefónica Tech, to the Legal Department at Telefónica Tech's registered office. Where a notice is permitted by e-mail: legal@telefonicatech.uk.

- 32.4 A notice delivered by hand will be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received at the time at which it would have been delivered in the normal course of post. Where permitted, notices sent by email during business hours will be deemed received on the day of despatch and if sent outside business hours, will be deemed received on the following Business Day.

33 Third Party Rights

- 33.1 Unless provided for in clause 33.2, this Agreement does not confer any rights on any person or party (other than the parties to this Agreement and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 33.2 Any Group Company of Telefónica Tech will be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Agreement. The consent of any relevant Group Company of Telefónica Tech is not required to rescind, waive, settle, or vary this Agreement or any provisions of it.

34 No Partnership or Agency

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

35 Governing Law and Jurisdiction

- 35.1 This Agreement and any other contract between the parties to which this Agreement relates and any other dispute or claim arising out of each of them will be governed by and construed exclusively in accordance with the laws of England and Wales.
- 35.2 The parties irrevocably agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 35.3 Telefónica Tech may issue proceedings (whether concurrently or not with proceedings referred to in clause 29.2) against the Customer in the location to which any goods are to be delivered to the extent permitted by the law applicable in that jurisdiction.
- 35.4 To the extent permitted by law the Convention on the International Sale of Goods 1980 and all international and domestic legislative (or other) implementations of that Convention, and the Uniform Laws on International Sales Act 1967, will not apply in relation to this Agreement.