

## TERMS AND CONDITIONS IN RELATION TO SUBSCRIPTION AND IMPLEMENTATION SERVICES TO BE SUPPLIED BY SAPPHIRE QUARTZ LIMITED (“SAPPHIRE”)

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in the contract.

**Acceptable Use Policy:** SAPPHIRE's acceptable use policy as displayed on the Website from time to time.

**Active Contractor:** a Contractor User who has submitted at least one timesheet using SAPPHIRE Pay and Bill during a Billing Period.

**Affiliates:** any other company which is an associate of the Customer, including all subsidiaries, holding companies and subsidiaries of holding companies, and includes any other companies with whom the directors of the Customer are associated as either directors, employees or as shadow directors (such judgement to be made using reasonable judgement by SAPPHIRE).

**Agreed Go Live Date:** the date agreed by the parties for Go Live as set out in the Project Plan.

**App:** the mobile application provided by SAPPHIRE to the Customer as part of the Services under the contract as more particularly described in the Documentation.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation for the Purpose and, in relation to SAPPHIRE Pay and Bill, shall include a Contractor User and an End Client User.

**Back Up Policy:** SAPPHIRE's back-up policy detailed in the SAPPHIRE Technical Overview document as displayed on the Website from time to time.

**Billing Period:** a period running from the day after the first Friday of a calendar month to the first Friday of the next calendar month.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for normal banking business.

**Client:** a third party in relation to which the Customer provides services using the Services including, but not limited to, a Limited Company Client and **Clients** shall be construed accordingly.

**Consumer Prices Index:** the Consumer Prices Index (CPI)(all items)(United Kingdom).

**Control:** 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 general management of the company, and **controls, controlled** and the expression **Change of Control** shall be construed accordingly.

**Contractor User:** a person who is providing services to the Customer and in relation to such services that person will submit timesheets to the Customer using SAPPHIRE Pay and Bill.

**Customer:** as detailed in the Order Form.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5 and 11.6.

**Consultancy Services:** any services to be supplied by SAPPHIRE to the Customer pursuant to a Statement of Works.

**Contract Year:** each 12-month period commencing on: (i) the Effective Date; and, (ii) each anniversary of the Effective Date during the Subscription Term.

**Customer Data:** the data inputted by the Customer, Authorised Users, or SAPPHIRE on behalf of a Customer or, where applicable, direct by a Client, in each case using the Services for the Purpose.

**Data Migration Fees:** the fees payable by the Customer to SAPPHIRE in relation to the required data migration element (if any) of the Training, Implementation and Configuration Services as more particularly set out in the Order Form.

**Data Protection Law:**

- (a) to the extent that UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data;
- (b) to the extent that EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or SAPPHIRE is subject, which relates to the protection of personal data.

**Documentation:** the document(s) made available to the Customer by SAPPHIRE online (which can be accessed at the Website) or which are otherwise made available to the Customer and which set out a description of the Services and the user instructions for the Services.

**DPA 2018:** Data Protection Act 2018 (and regulations made thereunder).

**Due Date:** the date on which payment of any charges which are to be paid by the Customer under the contract must be paid to SAPPHIRE.

**Effective Date:** the date of the Order Form.

**End Client User:** those clients of the Customer to which the Customer provides services and who are authorised by the Customer to use SAPPHIRE Pay and Bill via the Customer's SAPPHIRE Pay and Bill account in order to authorise relevant timesheets and payment in respect of those services.

**EU GDPR:** the General Data Protection Regulation ((EU) 2016/279).

**Fees:** the fees payable by the Customer for the Services and any other services to be provided by SAPPHIRE pursuant to the contract.

**Go Live:** the date on which the Services will be available for use by the Customer other than for testing and training purposes.

**Initial Subscription Term:** the initial term of the contract as set out in the Order Form.

**Limited Company Client:** a company which retains the services of the Customer in relation to the provision of accounting services.

**Minimum Subscription Fee:** where set out in the Order Form, the minimum monthly Subscription Fees payable by the Customer to SAPPHIRE as such fee is set out in the Order Form.

**SAPPHIRE:** Sapphire Quartz Limited (Company number: 10610988).

**SAPPHIRE Pay and Bill Account:** an account with a unique username and password which is dedicated to the Customer and which enables the Customer for its own use to use SAPPHIRE Pay and Bill for the Purpose.

**SAPPHIRE API:** the software interface services developed by SAPPHIRE which enables the Services to interact with third party applications.

**SAPPHIRE Pay and Bill:** the timesheet and expenses approval subscription services provided by SAPPHIRE from time to time as more particularly described in the Documentation.

**SAPPHIRE Software:** the online software applications provided by SAPPHIRE as part of the Services.

**Normal Business Hours:** 9.00 am to 5.30 pm local UK time, each Business Day.

**Order Form:** subject to clause 3.1, the order form signed by the parties setting out details of the contract and containing the Customer's consent to these Terms and which includes, but is not limited to, details of the Initial Subscription Term, the Fees payable by the Customer in relation to each of the Services, details of the Services to be purchased by the Customer and any additional services to be provided by SAPPHIRE pursuant to the contract with associated Fees.

**personal data:** has the meaning given to it at clause 5.1.

**Platform and Support Services Fee:** where set out in the Order Form, in relation to the Services, the platform and maintenance fee set out in the Order Form and which is payable by the Customer with effect from the Effective Date.

**Privacy Policy:** SAPPHIRE's privacy policy which is displayed on the Website from time to time and which confirms the categories of personal data which SAPPHIRE collects from the Customer, Clients and Authorised Users in connection with their use of the Service, the purposes for which such personal data is used by SAPPHIRE, the parties with whom SAPPHIRE shares such personal data, any transfers of such personal data outside the EEA and the security measures which SAPPHIRE has implemented and maintains in order to safeguard such personal data against unauthorised access and use.

**Project Plan:** the project plan agreed by the parties setting out the timetable for Go Live, the Agreed Go Live Date and the responsibilities of the parties in relation to Go Live.

**Purpose:** the use by the Customer (for itself and/or its Clients) and its Authorised Users to access the SAPPHIRE Software on their internet enabled device and:

- (a) manage timesheets, invoices and expenses in relation to SAPPHIRE Pay and Bill.

**Renewal Period:** the period described in clause 16.1.

**Security Policy:** SAPPHIRE's security policy as displayed on the Website from time to time.

**Service Credit:** the service credit payable by SAPPHIRE for failing to meet a Service Level and as more particularly set at Schedule 2 and **Service Credits** shall be construed accordingly.

**Services:** means any or all of the following subscription services made available by SAPPHIRE to the Customer pursuant to the contract from time to time during the Subscription Term by accessing such services via the Customer's and/or its Client's unique user name and password combination:

SAPPHIRE Pay and Bill;

and **Service** shall mean any of such Services.

**SLA:** the service level agreement which is set out in Schedule 2 (as such service level agreement may be supplemented or varied from time to time in accordance with these Terms) and **Service Level** shall mean any of the service levels set out in the SLA.

**Statement of Work:** each statement of work which is agreed in writing and signed by the parties from time to time for Consultancy Services or any other services or deliverables which are specified and agreed in such statement of work and **Statements of Work** shall be construed accordingly.

**Statement of Work Fees:** the fees payable for the services to be provided by SAPPHIRE as set out in a Statement of Work and which shall be calculated with reference to the rates set out in the Order Form.

**Statement of Work Services:** in relation to a Statement of Work the services that SAPPHIRE has agreed to provide to the Customer as more particularly set out in that Statement of Work.

**Subscription Fees:** means the higher of:

- (a) the subscription fees payable by the Customer to SAPPHIRE for the User Subscriptions in accordance with clause 9, as such subscription fees are set out in the Order Form and subject to SAPPHIRE's right to increase such subscription fees:
  - (i) in accordance with clause 9.8 (CPI Increase); and
  - (ii) after expiry of the Initial Subscription Term in accordance with clause 9.9; and
- (b) where applicable, the Minimum Subscription Fee,

and where there is no Minimum Subscription Fee applicable to a Customer, the Subscription Fees shall be as stated at paragraph (a) above.

**Subscription Term:** has the meaning given in clause 16.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

**Support Request:** a request for support in relation to any problems or issues with the Services made by raising a ticket with the SAPPHIRE helpdesk strictly in accordance with the Support Services Policy.

**Support Services Policy:** SAPPHIRE's policy for providing support in relation to the Services as displayed on the Website from time to time.

**Termination Sum:** has the meaning given to it at clause 16.4(g).

**the contract:** means:

- (a) the Order Form;

(b) Statements of Work (if any); and

(c) these Terms.

**these Terms:** these terms and conditions as amended by SAPPHIRE from time to time.

**Third Party Services:** means any services which are provided to the Customer or a Client by a third party and which are not provided directly by SAPPHIRE as part of the Services.

**Third Party Sites:** has the meaning given to it at clause 6.1.

**Third Party Terms:** the terms and conditions and privacy policies for any Third Party Services which the Customer accepts in connection with the Customer's use of Third Party Services which SAPPHIRE informs the Customer of from time to time.

**Training, Implementation and Configuration Services:** the training, implementation and configuration services in relation to the Services including, where agreed, any services in relation to data migration, agreed to be provided by SAPPHIRE to the Customer pursuant to the contract.

**Training, Implementation and Configuration Fees:** the fees payable by the Customer to SAPPHIRE under the contract for the Training, Implementation and Configuration Services to enable Go Live as such fees are set out in the Order Form.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

**User Subscriptions:** the user subscriptions in relation to the Services as more particularly described at Schedule 1 and which are purchased by the Customer pursuant to the contract in relation to a Service agreed to be provided by SAPPHIRE pursuant to the contract and which entitles the Customer to access and use that Service and the Documentation for the Purpose on its own behalf and/or on behalf of and for the benefit of its Clients (as the case may be).

**Virus:** any thing or device (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.

**Website:** means the website which can be found at [www.wearesapphire.co.uk/quartz](http://www.wearesapphire.co.uk/quartz) (or any other URL which SAPPHIRE notifies to the Customer from time to time either in writing (including by e-mail) or by publishing details on the Website).

1.2 The Schedules shall form part of, and are incorporated into, the contract.

1.3 Clause, schedule and paragraph headings shall not affect the interpretation of the contract.

1.4 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is amended, extended or re-enacted from time to time provided that, as between the parties, no such amendment, extension or re-enactment made after the date of the contract shall apply for the purposes of the contract if and to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to writing or written excludes faxes and e-mail, unless otherwise expressly stated in the contract.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of the contract; references to paragraphs are to paragraphs of the relevant Schedule to the contract.
- 1.12 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
- (a) another person (or its nominee) by way of security or in connection with the taking of security; or
  - (b) its nominee.
- For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be interpreted so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 A reference to **the contract** shall be a reference to the contract as is varied from time to time.

## **2. Varying these Terms**

Save in relation to the Subscription Fees set out in the Order Form and which, subject to increase in accordance with clause 9.8 (CPI Increase), shall apply for the duration of the Initial Subscription Term, the Customer agrees that SAPPHIRE may vary these Terms from time to time and the Customer agrees to accept any changes made to these Terms as such terms can be found on the Website from time to time. SAPPHIRE may advise the Customer in writing of any proposed changes to these Terms and the Customer should ensure that it reviews the terms as found on the Website regularly so that it is aware of any changes made to these Terms.

## **3. Purchase of and right to use the Services**

3.1 As at the Effective Date, the Customer has agreed to purchase the Services and which SAPPHIRE has agreed to make available to the Customer during the Subscription Term as set out in the Order Form. Where the Customer wishes to purchase additional Services during the Subscription Term, it shall notify SAPPHIRE in writing and, if SAPPHIRE agrees to make available such additional Services to the Customer, SAPPHIRE shall either confirm in writing the availability of such additional Services or shall provide a Statement of Work in relation to such additional Services (as the case may be) detailing the additional Services agreed to be made available by SAPPHIRE to the Customer on the terms of the contract. The Fees for all Services and other services to be provided pursuant to the contract are as set out in the Order Form or the applicable Statement of Work (as the case may be).

3.2 In consideration of the Customer paying the applicable Platform and Support Services Fee and Subscription Fees (and subject at all times to the Customer's compliance with the restrictions set out in this clause 3 and the Customer's compliance with the other terms and conditions of the contract and any applicable Third Party Terms), SAPPHIRE hereby grants to the Customer a personal, non-exclusive, non-transferable, revocable licence to the Customer which permits the Customer (and its Authorised Users) to access and use the Services and the Documentation solely for the Purpose and solely for the benefit of and on behalf of itself and/or each Client (as the case may be) during the Subscription Term only. The Customer shall also be entitled to permit the Affiliates to use the Services and Documentation solely for the Purpose and solely for the benefit and on behalf of itself and/or their own Clients during the Subscription Term to the same extent as the Customer, provided always that the Customer shall at all times be responsible for the acts and omissions of such Affiliates and payment of all amounts (including the applicable Platform and Support Services Fee and the Subscription Fees) in relation to Affiliates (notwithstanding any agreement to invoice the Affiliates directly). SAPPHIRE shall be entitled to suspend access to the Services (or any of them) and Documentation by any Affiliate upon providing written notice to the Customer.

3.3 The Customer acknowledges and agrees that:

- (a) it is not granted any right to sub-licence the rights which are granted to it by the Supplier in clause 3.1;
- (b) to the extent that Authorised Users have been granted the right to use the Services and the Documentation this right shall only be for the Purpose;
- (c) it does not have, (nor does any Client have) any right or interest in the underlying source code which is used to deliver the Services and the rights granted to the Customer are limited to a right to access the Services and Documentation using each allocated user name and password, subject to the terms of the contract; and
- (d) with respect to any Affiliates which it allows to use the Services and Documentation (pursuant to clause 3.1), the Customer shall ensure that such Affiliates are made aware

of the terms of the contract, including any applicable Third Party Terms, and shall be responsible for ensuring that such Affiliates comply with the obligations set out in the contract as though they were the Customer under the contract and a reference to the Customer in these Terms shall be construed accordingly.

3.4 The Customer shall not, and shall procure that its Clients and Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services or use the Services for any purpose that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property; or
- (g) otherwise breaches: (i) the Acceptable Use Policy; or (ii) the terms of any contract to which SAPPHIRE is a party and which is necessary for the performance of the Services; or (iii) any applicable Third Party Terms,

and SAPPHIRE reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause (including the right to suspend access to and use of the Services entirely or partially for such period as SAPPHIRE shall determine in its absolute discretion).

3.5 The Customer shall not, and shall procure that each Client and Authorised User shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion or by agreement in writing between the parties:
  - (i) and except to the extent expressly permitted under the contract, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Website, the Services (including the software which enables the provision of the Services) and/or Documentation (as applicable) in any form or media or by any means; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services (to the extent that the Services are software-enabled); or
- (b) use the Services and/or Documentation to provide services to third parties (save for the provision of services to Clients for the Purpose); or
- (c) subject to clause 25.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or



(d) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.

3.6 The Customer shall ensure that there is no unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any unauthorised access or use, the Customer shall immediately notify SAPPHIRE and co-operate with SAPPHIRE to mitigate the consequences of any unauthorised access or use (including prompt and diligent compliance with any reasonable instructions of SAPPHIRE).

3.7 The Customer acknowledges that the Customer shall only be permitted to allow its Clients to have access to the Services and Documentation via a unique user name and password to access the Website, and the Customer shall not be entitled to permit any other of its clients to have such access. Notwithstanding this, the Services may be used for the benefit of all Clients.

#### **4. Services**

4.1 In consideration of:

(a) the payment of the Training, Implementation and Configuration Fees, SAPPHIRE shall provide the Training, Implementation and Configuration Services;

(b) the payment of the Platform and Support Services Fee and the Subscription, SAPPHIRE shall, during the Subscription Term:

(i) provide the Services and make available the Documentation to the Customer on and subject to the terms of the contract;

(ii) provide support services in accordance with the Support Services Policy during Normal Business Hours;

(iii) use its commercially reasonable endeavours to perform the Services in accordance with the SLA;

(iv) provide reasonable use of SAPPHIRE's customer support line (to be determined at the sole discretion of SAPPHIRE). If the use of SAPPHIRE's support line is deemed excessive (determined at the sole discretion of SAPPHIRE), additional fees will apply and these will be applied using the fees set out in in the Order Form;

(c) the payment of the Statement of Work Fees, SAPPHIRE shall provide the Statement of Work Services.

4.2 SAPPHIRE shall use commercially reasonable endeavours to make the Services available twenty-four (24) hours a day, seven (7) days a week, except for:

(a) planned maintenance carried out during SAPPHIRE's maintenance window (i.e. anytime outside Normal Business Hours);

(b) unscheduled maintenance performed during Normal Business Hours, provided that SAPPHIRE has used commercially reasonable endeavours to give the Customer at least six (6) Normal Business Hours' notice in advance; and

(c) unscheduled emergency maintenance in respect of any security or other emergency reasons including events which are outside SAPPHIRE's reasonable control.

- 4.3 SAPPHIRE may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at SAPPHIRE's then current rates.
- 4.4 SAPPHIRE may provide the Customer with consulting, training, development and other professional and consultancy services as specifically set forth in a Statement of Work.
- 4.5 Unless otherwise specified in a Statement of Work, SAPPHIRE hereby retains all right, title and interest in and to any deliverables which are provided under a Statement of Work including any and all intellectual property rights in such deliverables. SAPPHIRE grants to the Customer a non-exclusive, non-transferable and perpetual licence to use any deliverables created under a Statement of Work in conjunction with the Services for its own internal business purposes (subject to SAPPHIRE having received full payment for the deliverables in accordance with the charges set out in the Statement of Work).
- 4.6 By agreeing to these Terms and using the Services in relation to the filing of a VAT return (on its behalf and/or on behalf of a Client), the Customer agrees (on its behalf and/or behalf of each such Client) that SAPPHIRE Accounts may, in the performance of such Services, pass information to HMRC, and receive information from HMRC, on behalf of the Customer and/or such Client.

## 5. Customer data

- 5.1 In this clause 5, "controller", "data controller", "data processor", "data subject", "personal data", "process", "processor" and "special categories of data" shall have the meaning given to them by Data Protection Law.
- 5.2 SAPPHIRE's Privacy Policy is incorporated into the contract by reference and applies to the Services. The Customer acknowledges and agrees that Customer Data shall be collected and used by SAPPHIRE in accordance with the Privacy Policy and shall ensure that each Client, Contractor User and End Client User (as the case may be) is aware of the Privacy Policy and provides its prior written consent to the Customer which shall confirm that that party has seen and agrees to that party's personal data being used by SAPPHIRE in accordance with the Privacy Policy.
- 5.3 The Customer, as data controller/controller appoints SAPPHIRE as a data processor/processor to process the personal data described in the contract (the **Data**) for the purposes described in the contract (the **Permitted Purpose**). Each party shall comply with the obligations that apply to it under Data Protection Law.
- 5.4 The Customer shall not disclose (and shall not permit any data subject to disclose) any sensitive personal data/special categories of personal data to SAPPHIRE for processing.
- 5.5 SAPPHIRE shall not transfer the Data outside of the European Economic Area (**EEA**) unless it has taken such measures as are necessary to ensure the transfer is in compliance with Data Protection Law. Such measures may include transferring the Data to a recipient in a country that the European Commission has decided provides adequate protection for personal data, to a recipient that has achieved binding corporate rules authorisation in accordance with Data Protection Law, or to a recipient that has executed standard contractual clauses adopted or approved by the European Commission.
- 5.6 SAPPHIRE shall ensure that any person it authorises to process the Data (an **Authorised Person**) shall protect the Data in accordance with SAPPHIRE's confidentiality obligations under the contract.

- 5.7 SAPPHIRE shall implement technical and organisational measures to protect the Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the Data (a **Security Incident**).
- 5.8 The Customer consents to SAPPHIRE engaging third party subprocessors to process the Data for the Permitted Purpose provided that: (i) SAPPHIRE maintains an up-to-date list of its subprocessors and shall notify the Customer of any change in subprocessors at least 10 Business Days' prior to any such change; (ii) SAPPHIRE imposes data protection terms on any subprocessor it appoints that require it to protect the Data to the standard required by Data Protection Law; and (iii) SAPPHIRE remains liable for any breach of this clause that is caused by an act, error or omission of its subprocessor. If the Customer objects to a proposed subprocessor on the data protection compliance grounds, it shall notify SAPPHIRE within 5 Business Days of receipt of SAPPHIRE's notice and shall specify the grounds on which it objects and the Customer may terminate the contract by serving notice within 10 Business Days of SAPPHIRE's notice, subject to payment of the Termination Sum. As at the Effective Date, SAPPHIRE processes personal data of its clients using AWS Europe as its sub-Processor and the Customer acknowledges and agrees that SAPPHIRE shall be entitled to appoint AWS Europe as its sub-processor to process personal data in respect of which the Customer is the controller under the contract during the Subscription Term.
- 5.9 SAPPHIRE shall provide reasonable and timely assistance to the Customer (at the Customer's expense) to enable the Customer to respond to: (i) any request from a data subject to exercise any of its rights under Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the Data. In the event that any such request, correspondence, enquiry or complaint is made directly to SAPPHIRE, SAPPHIRE shall promptly inform the Customer providing full details of the same.
- 5.10 If SAPPHIRE believes or becomes aware that its processing of the Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform the Customer and provide reasonable cooperation to the Customer (at the Customer's expense) in connection with any data protection impact assessment that may be required under Data Protection Law.
- 5.11 If SAPPHIRE becomes aware of a confirmed Security Incident, SAPPHIRE shall:
- (a) inform the Customer without undue delay and shall provide reasonable information and cooperation to the Customer so that the Customer can fulfil any data breach reporting obligations it may have under (and in accordance with the timescales required by) Data Protection Law; and
  - (b) take any reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident; and
  - (c) keep the Customer informed of all material developments in connection with the Security Incident.
- 5.12 Upon termination or expiry of the contract, SAPPHIRE shall (at the Customer's election) destroy or return to the Customer all Data in its possession or control. This requirement shall not apply to the extent that SAPPHIRE is required by applicable law to retain some or all of the Data, or to Data it has archived on back-up systems, which Data SAPPHIRE shall securely isolate and protect from any further processing except to the extent required by such law.
- 5.13 On request by the Customer, SAPPHIRE shall:

- (a) contribute to audits and inspections of any written records which SAPPHIRE maintains in respect of its compliance with this clause 5 by permitting the Customer to audit and inspect such records; and
- (b) respond to any written audit questions submitted to it by the Customer in respect of SAPPHIRE's compliance with this clause 5,

provided that the Customer's rights under this clause 5.13 shall be exercised no more than once per Contract Year and any inspection shall take place during Normal Business Hours on Business Days and the Customer shall take all reasonable measures to prevent any unnecessary disruption to SAPPHIRE's operations.

- 5.14 The Customer acknowledges and agrees that internet transmissions are never completely private or secure and that any message or information which is sent or received using the Services may be read or intercepted by others, even if a particular transmission is encrypted.
- 5.15 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data (and shall procure that each Client shall maintain Customer Data so that it remains accurate, complete and up-to-date at all times).
- 5.16 SAPPHIRE shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy as such document may be amended by SAPPHIRE in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for SAPPHIRE to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by SAPPHIRE in accordance with the archiving procedure described in its Back-Up Policy. SAPPHIRE shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by SAPPHIRE to perform services related to Customer Data maintenance and back-up). The Customer shall ensure that each Client is aware of SAPPHIRE's Back-Up Policy and obligations with regard to the restoration of Customer Data.
- 5.17 SAPPHIRE shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data, as such documents may be amended from time to time by SAPPHIRE in its sole discretion.
- 5.18 The Customer consents (on behalf of itself and each Client) to SAPPHIRE collecting and using technical information about the devices and related software, hardware and peripherals for Services that are internet-based or wireless to improve its products and to provide any Services to the Customer.

## **6. Third party providers**

- 6.1 The Services may contain links to other independent third-party websites (**Third Party Sites**). Third Party Sites are not under SAPPHIRE's control, and SAPPHIRE is not responsible for and does not endorse their content or their privacy policies (if any). The Customer will need to make its own independent judgement regarding your interaction with any Third Party Sites, including the purchase and use of any products or services accessible through them.
- 6.2 SAPPHIRE makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such Third Party Site, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any Third Party Site is between the Customer and the relevant third party, and not SAPPHIRE. SAPPHIRE recommends that the Customer refers to the third party's website terms and conditions and

privacy policy prior to using the relevant Third Party Site. SAPPHIRE does not endorse or approve any Third Party Site nor the content of any Third Party Site.

6.3 The Services can interact with third party applications where the Customer enables the SAPPHIRE API. Where the Customer enables the SAPPHIRE API, use of the SAPPHIRE API is subject to the following conditions:

- (a) where applicable, the Customer has received the express prior written permission of the Client (and has notified the Client of the conditions relating to use of the SAPPHIRE API as set out in the contract);
- (b) the Customer acknowledges and agrees that (and shall procure that the Client acknowledges and agrees that) any third party application which the Customer selects to access the Services has the ability to access to Customer Data and is outside of SAPPHIRE's control;
- (c) before enabling the SAPPHIRE API and using any third party application, it is the sole responsibility of the Customer and the Customer shall (and, where applicable, shall procure that the Client shall) carefully assess whether or not the Customer (and, where applicable, the Client) understands and is willing to accept the risks associated with use of each third party application, the terms and conditions on which the third party application will be provided (including any privacy policy which sets out the manner in which the third party will collect and use Customer Data) and any assurances provided by the third party regarding the Customer's (and the Client's) privacy and security.

6.4 The Customer acknowledges and agrees that it is the Customer's decision as to whether or not it enables the SAPPHIRE API and that the Customer has the right to disable the SAPPHIRE API at any time by modifying the preferences for the relevant SAPPHIRE Account.

6.5 As third party applications which the Customer (and Client) may use to access the Services are provided by third parties and used at the election of the Customer (and, where applicable, the Client), SAPPHIRE does not accept any responsibility for any loss suffered by the Customer (and/or where applicable, the Client) as a result of the Customer's (or, where applicable, the Client's) use of any third party application to access the Services.

## **7. Supplier's obligations**

7.1 SAPPHIRE shall provide the Services and any other services supplied under the contract substantially in accordance with the Documentation with reasonable skill and care.

7.2 Clause 7.1 shall not apply to the extent of any non-conformance which is caused by:

- (a) use of the Services and any other services supplied under the contract contrary to SAPPHIRE's instructions;
- (b) modification or alteration of the Services or any other services supplied under the contract by any party other than SAPPHIRE or SAPPHIRE's duly authorised contractors or agents;
- (c) the Customer's or Client's breach of the contract (or any Third Party Terms); or
- (d) use of the Services for any purpose other than the Purpose.

7.3 If the Services or any other services supplied under the contract do not conform with clause 7.1, SAPPHIRE will, at its expense, use all reasonable commercial endeavours to correct any such

non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of clause 7.1.

7.4 SAPPHIRE:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.5 The contract shall not prevent SAPPHIRE from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the contract.

7.6 SAPPHIRE warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the contract.

**8. Customer's obligations**

8.1 The Customer shall (and shall procure that each Authorised User and each Client shall):

- (a) provide SAPPHIRE with:
  - (i) all necessary co-operation in relation to the contract; and
  - (ii) all necessary access to such information as may be required by SAPPHIRE, in order to provide the Services, the Training, Implementation and Configuration Services, the Statement of Work Services and any other services to be supplied under the contract, including Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under the contract;
- (c) carry out all other Customer and Client responsibilities set out in the contract and the Project Plan in a timely and efficient manner (and SAPPHIRE shall be relieved from the performance of and liability for breach of its obligations to the extent attributable to the Customer's breach of the contract or failure to perform the Customer responsibilities in a timely and efficient manner);
- (d) obtain and shall maintain all necessary licences, consents, and permissions necessary for SAPPHIRE, its contractors and agents to perform their obligations under the contract, including without limitation the Services;
- (e) ensure that its network and systems comply with the relevant specifications provided by SAPPHIRE from time to time; and
- (f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to SAPPHIRE's data centres, and all

problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

8.2 The Customer shall:

- (a) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the contract and shall be responsible for any Authorised User's breach of the contract;
- (b) where applicable, only access a Client's SAPPHIRE Account by using a password and username which that Client has expressly authorised the Customer to use in writing;
- (c) only use the Services on behalf of the Client whose SAPPHIRE Account the Customer is accessing and solely for money management purposes relating to that Client's own business which are legal;
- (d) ensure that each Client is aware of the terms and conditions and policies subject to which the Services are made available before using them on behalf of a Client (including Third Party Services);
- (e) procure an irrevocable written authorisation from each Client which grants the Customer the right to use the Services on and subject to the terms and conditions of the contract for the benefit of the Client and provide a copy of the Client's written authorisation to SAPPHIRE upon request (and shall procure that the Client shall do all things which are required by SAPPHIRE or a third party to comply with the terms of the contract including the grant of any necessary powers of attorney); and
- (f) ensure that each Client complies with the terms of the contract applicable to the Customer as if it were a party to it.

8.3 The Customer shall not (and shall procure that Authorised Users and the Client shall not);

- (a) do anything which could reasonably be expected to damage, disable, overburden, or materially impair the Services or the Website or which is likely to interfere with any other party's use or enjoyment of the Services;
- (b) question or dispute SAPPHIRE's ownership of the intellectual property rights in the Services or any other services supplied under the contract, the Documentation and the Website; and/or
- (c) employ the services of any employee, contractor, consultant or any associates of SAPPHIRE either directly or through any third party to undertake work of a similar nature during the term of the contract or on termination of the contract and thereafter for a period of 24 months.

**9. Charges and payment**

9.1 The Customer shall pay to SAPPHIRE:

- (a) the Training, Implementation and Configuration Fees in relation to the Training, Implementation and Configuration Services;
- (b) the Platform and Support Services Fee;
- (c) the Subscription Fees for the User Subscriptions;

- (d) the Statement of Work Fees in relation to the Statement of Work Services; and
- (e) expenses incurred in relation to the Services and any other services provided in accordance with the contract,

in accordance with this clause 9.

9.2 The:

- (a) Platform and Support Services Fee shall be due and payable with effect from the date specified on the Order Form and shall be paid in relation to each Billing Period (or part thereof) on the date on which Subscription Fees are payable in accordance with clause 9.2(c) (the **Due Date**);
- (b) Training, Implementation and Configuration Fees shall be paid within 7 days of the date of invoice (the **Due Date**) and SAPPHIRE will generally raise an invoice for the Training, Implementation and Configuration Fees on the date of the Order Form;
- (c) Subscription Fees shall be paid in relation to each Billing Period in arrear by the Customer by no later than 7 days of the date of invoice (the **Due Date**) and SAPPHIRE will generally raise an invoice for the Subscription Fees on the Monday following the first Friday of each calendar month; (*Note: a weekly payslip covers 1 pay interval, i.e. 1 week of tax allowances and a monthly payslip covers 4 or 5 pay intervals, i.e. 4 or 5 weeks of tax allowances, depending on the Billing Period*) and
- (d) Statement of Work Fees shall be paid on the date specified in the relevant Statement of Work (and where no date is specified, 25% of such fees shall be paid on signature of the Statement of Work and the remainder shall be paid within 7 days of the date on which SAPPHIRE notifies the Customer that the relevant services have been completed or the deliverables have been provided) (in each case, the **Due Date**),

and all fees due from the Customer under the contract shall be paid in full and received in cleared funds by SAPPHIRE on or before the Due Date without application of any right of set-off, counterclaim, deduction or abatement.

9.3 The Customer acknowledges and agrees that:

- (a) the Subscription Fees shall be calculated as set out in the Order Form and in relation to each Billing Period in arrears based on the User Subscriptions during that Billing Period, subject always (where applicable) to the liability of the Customer to pay the Minimum Subscription Fee in relation to each Billing Period where such minimum fee is greater than the Subscription Fees for that Billing Period; and
- (b) the Subscription Fees shall be payable from Go Live save where the Agreed Go Live Date is delayed as a result of the Customer's negligence, failure to perform or delay in the performance of any of its obligations under the contract or by reason of a request from the Customer to delay Go Live, in which case SAPPHIRE may, at its sole discretion, require the Customer to pay the Minimum Subscription Fees from the Agreed Go Live Date and/or pay such additional Training, Implementation and Configuration Fees as SAPPHIRE considers appropriate (acting reasonably) to reflect additional time and costs incurred or to be incurred by SAPPHIRE as a result of such delay.

9.4 The Customer acknowledges and agrees that payment of Fees by the Due Date is of the essence of the contract.



- 9.5 Any required travel, accommodation and subsistence expenses will be an additional expense payable by the Customer and will be agreed in advance between the Customer and SAPPHIRE and added to the next invoice submitted by SAPPHIRE in relation to Subscription Fees and shall be payable in accordance with clause 9.2(c).
- 9.6 If SAPPHIRE has not received payment on the Due Date, and without prejudice to any other rights and remedies of SAPPHIRE:
- (a) SAPPHIRE may, without any obligation to notify or liability to the Customer, disable the Customer's password, account and access to all or any part of the Services and SAPPHIRE Account and/or SAPPHIRE Pay and Bill Account (as the case may be) and SAPPHIRE shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
  - (b) interest shall accrue on a weekly basis on such due amounts at a rate of 0.5% per week, commencing on the Due Date and continuing until fully paid, whether before or after judgment.
- 9.7 All amounts and fees stated or referred to in the contract:
- (a) shall be payable in pounds sterling;
  - (b) are, subject to clause 13.7(b), non-cancellable and non-refundable; and
  - (c) are exclusive of value added tax, which shall be added to SAPPHIRE's invoice(s) at the appropriate rate and paid in addition.
- 9.8 SAPPHIRE will increase the Subscription Fees on 1st April each year during the Subscription Term in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period. Where a new contract is entered into during a financial year, the CPI increase will be prorated for the period beginning in the month following contract signature.
- 9.9 Subject to clause 9.8, the Subscription Fees and other rates or amounts set out in the Order Form are fixed for the Initial Subscription Term. After the Initial Subscription Term, the Subscription Fees and such rates will be as notified by SAPPHIRE to the Customer (and in the absence of any notification, the Subscription Fees shall continue at the Customers existing pricing until such time as SAPPHIRE notifies the Customer of the applicable changes).
- 10. Proprietary rights**
- 10.1 The Customer acknowledges and agrees that SAPPHIRE and/or its licensors own all intellectual property rights in the Services, any other services supplied under the contract and the Documentation. Except as expressly stated herein, the contract does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, such services or the Documentation.
- 10.2 SAPPHIRE warrants that it has all the rights in relation to the Services, any other services to be supplied under the contract and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the contract.

## **11. Confidentiality**

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the contract.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the contract.
- 11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 11.5 The Customer acknowledges that details of the Services, any other services supplied under the contract including, but not limited to, the Subscription Fees and charges payable in relation to such services and the results of any performance tests of the Services and any such services, constitute SAPPHIRE's Confidential Information.
- 11.6 SAPPHIRE acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.7 This clause 11 shall survive termination of the contract, however arising.
- 11.8 No party shall make, or permit any person to make, any public announcement concerning the contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## **12. Indemnity**

- 12.1 The Customer shall defend, indemnify and hold harmless SAPPHIRE against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:
- (a) the Customer's use of the Services, any other services supplied under the contract, the Documentation and/or Third Party Services;

- (b) any breach of the contract including any policies referred to in the contract (and including any claim made by or on behalf of a Client against SAPPHIRE arising from the Customer's breach of the contract), excluding any breach by SAPPHIRE;
- (c) any breach of any Third Party Terms, excluding any breach by SAPPHIRE;
- (d) any failure to comply with applicable laws or regulations, the requirements of any regulatory authority or any court Order, excluding any failure by SAPPHIRE;
- (e) the infringement of any third party rights (including the rights of any Client), other than by SAPPHIRE; and/or
- (f) any act or omission of the Customer or the Client which puts SAPPHIRE in breach of applicable laws and regulations, the requirements of a regulatory authority, court order or in breach of any contract with any service provider which SAPPHIRE contracts with to provide the Services or any other services provided under the contract,

provided that:

- (i) the Customer is given prompt notice of any such claim;
- (ii) SAPPHIRE provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (iii) the Customer is given sole authority to defend or settle the claim.

12.2 SAPPHIRE shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) SAPPHIRE is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to SAPPHIRE in the defence and settlement of such claim, at SAPPHIRE's expense; and
- (c) SAPPHIRE is given sole authority to defend or settle the claim.

12.3 In the defence or settlement of any claim, SAPPHIRE may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the contract immediately on notice in writing to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.4 In no event shall SAPPHIRE, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than SAPPHIRE; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by SAPPHIRE; or
- (c) any breach of the contract; or

- (d) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from SAPPHIRE or any appropriate authority.
- 12.5 Clauses 12.2, 12.3 and 13.7(b) state the Customer's sole and exclusive rights and remedies, and SAPPHIRE's (including SAPPHIRE's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

**13. Limitation of liability**

13.1 The Customer acknowledges and agrees (and shall procure that the Client acknowledges and agrees) that:

- (a) the Services have not been developed to meet the Customer's or the Client's individual requirements, and that it is therefore the Customer's and the Client's responsibility to ensure that the facilities and functions of the Services as described in the Documentation meet the Customer's and the Client's requirements;
- (b) it is the Customer's and each Client's responsibility to ensure that any information which is submitted using the Services is backed-up or a copy retained and that the Services are not intended to act as the sole repository for all of the Customer's and/or Client's information;
- (c) all information which is provided by the Services shall be checked by the Customer and the Client before acting or relying on it and the Services are not intended to be a substitute for professional accountancy and tax advice and the information provided by our Services does not constitute accountancy or tax advice;
- (d) the Customer and each Client will at all times remain responsible for its compliance with all legal obligations in relation to the preparation and storage of the Customer's and each Client's accounting and tax records and filings with HMRC; and
- (e) as the Services are software-enabled and provided over the internet, the Services are not error-free and may suffer from minor defects and bugs, will not be available on a 24/7/365 basis (and no guarantee is provided as to the availability, speed or performance of the Services) and SAPPHIRE does not guarantee that the Services will be free from Viruses (but it will use industry standard software to detect and eradicate Viruses, where reasonably possible).

13.2 This clause 13 sets out the entire financial liability of SAPPHIRE (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with the contract;
- (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the contract.

13.3 Except as expressly and specifically provided in the contract:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. SAPPHIRE shall have no liability for any damage caused by errors or omissions in

any information, instructions or scripts provided to SAPPHIRE by the Customer in connection with the Services, or any actions taken by SAPPHIRE at the Customer's direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the contract; and
- (c) the Services and the Documentation are provided to the Customer on an "as is" and "as available" basis.

13.4 Nothing in the contract excludes the liability of SAPPHIRE:

- (a) for death or personal injury caused by SAPPHIRE's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.5 If SAPPHIRE fails to comply with any of the Service Levels then, subject to the terms of the contract, the Customer shall become entitled to the Service Credit specified in Schedule 2 corresponding to the relevant failure. The parties acknowledge that each Service Credit is a genuine pre-estimate of the loss likely to be suffered by the Customer and not a penalty and the provision of a Service Credit shall be an exclusive remedy for a particular Service Level failure.

13.6 If SAPPHIRE's performance of its obligations under the contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay (including, but not limited to, any Service Credit, that would have been payable as a result of such prevention or delay).

13.7 Subject to clauses 13.3, 13.4 and 13.5:

- (a) SAPPHIRE shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any of the following losses or damage (howsoever arising):
  - (i) loss of profits;
  - (ii) loss of business;
  - (iii) depletion of goodwill and/or similar losses or loss;
  - (iv) loss of, damage to or corruption of data or information;
  - (v) fines (including fines levied by a regulatory authority or tax authority) or any costs, expenses or interest;
  - (vi) pure economic loss; or
  - (vii) any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the contract; and
- (b) SAPPHIRE's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the greater of:

- (i) £5,000 in each Contract Year; or
- (ii) in each Contract Year:
  - (A) the total Subscription Fees paid or payable for the User Subscriptions in such Contract Year where such liability arises in connection with the performance or contemplated performance of the contract in relation to the Services; and
  - (B) where such liability arises in connection with the performance or contemplated performance of the contract in relation to services provided under the contract other than the Services, the total fees paid or payable for such services.

#### **14. Suspension and cancellation of the Services**

14.1 The Customer can close a SAPPHIRE Account in relation to a particular Client at any time by notifying SAPPHIRE in writing. Subject to the receipt of the Subscription Fees for the SAPPHIRE Account for the current Billing Period, no further Subscription Fees will be billed for the closed SAPPHIRE Account and no refund will be made of any Subscription Fees already billed and paid in respect of the closed SAPPHIRE Account.

14.2 SAPPHIRE may suspend access to or use of any or all of the Services or permanently cancel a SAPPHIRE Account in the event that:

- (a) the Customer or the Client fails to comply with:
  - (i) the contract;
  - (ii) any of the policies referred to in the contract;
  - (iii) any Third Party Terms;
- (b) if the continued use of any of the Services would result in SAPPHIRE being in breach of:
  - (i) any applicable laws, regulatory requirements, court Orders, the requirements of any regulatory authority or law enforcement agency;
  - (ii) any contract to which SAPPHIRE is a party and which is necessary for the performance of the Services;
- (c) payment of the Subscription Fees is not paid by the Due Date (or any other fees are not paid by the agreed date).

14.3 In respect of any suspension or cancellation by SAPPHIRE pursuant to clause 14.2, no refund of any Subscription Fees for the SAPPHIRE Account shall be paid (and the Customer shall be responsible for the payment of twelve (12) months' fees for each suspended or cancelled SAPPHIRE Account).

#### **15. Non solicitation**

15.1 The Customer shall not, without the prior written consent of SAPPHIRE, at any time from the Effective Date until the expiry of 12 months after termination or expiry of the contract, solicit or entice away from the employment of SAPPHIRE or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of SAPPHIRE in relation to the provision of the Services at any time.

15.2 If the Customer breaches clause 15.1, the Customer agrees to pay on demand to SAPPHIRE the sum equal to one-year's salary of such employee or sub-contractor, (plus VAT if applicable), it being agreed by the parties that such sum represents a genuine pre-estimate of the loss that SAPPHIRE would suffer in the event of such breach.

## 16. Term and termination

16.1 The contract shall, unless otherwise terminated as provided in this clause 16, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, the contract shall be automatically renewed for successive periods of twelve (12) months or such successive periods as detailed on the Order Form (where applicable) (each a **Renewal Period**) and the Subscription Fees payable during any Renewal Period shall be as set out at clause 10.9 unless:

- (a) either party notifies the other party of termination, in writing, at least 6 months before the end of the Initial Subscription Term or any Renewal Period (as the case may be), in which case the contract shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of the contract,

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

16.2 Without affecting any other right or remedy available to it, either party may terminate the contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any other term of the contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (f) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within fourteen (14) days;
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.2(b) to clause 16.2(h) (inclusive);
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

16.3 Without affecting any other right or remedy available to it, SAPPHIRE may terminate the contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the contract on the Due Date;
- (b) the Customer fails to comply with clause **Error! Reference source not found.**;
- (c) a Client does not comply with any of the terms of the contract;
- (d) the Customer (or a Client) fails to comply with the Third Party Terms;
- (e) there is a Change of Control of the Customer; or
- (f) the Customer:
  - (i) has committed a crime; or
  - (ii) has become involved in or becomes associated with (whether directly or indirectly) any situation or activity (whether caused by the Customer or a third party (including but not limited to a Client)) which:
    - (A) tends in the reasonable opinion of SAPPHIRE to have a negative effect on the reputation of SAPPHIRE or any aspect of its business;
    - (B) would expose SAPPHIRE or any aspect of its business to disrepute, scandal, ridicule or contempt, or would tend to shock, insult or offend the public in any territory in which SAPPHIRE's products or services are marketed;
    - (C) reflects unfavourably on the reputation of SAPPHIRE, its brands, products or services; or
    - (D) might affect the supply, successful sales and exploitation of the products or services of SAPPHIRE,

and the Customer agrees that the occurrence of any situation as defined in sub-clauses 16.3(f)(i) and/or 16.3(f)(ii) shall be deemed to be a material breach of the contract in terms of clause 16.2(a) regardless of whether the Customer has caused the situation or not.

SAPPHIRE's decision on all matters arising under this clause shall be conclusive.

16.4 On termination of the contract for any reason:



- (a) the Customer shall immediately cease to be able to access any of the Services or any other services supplied by SAPPHIRE pursuant to the contract;
- (b) the Customer shall immediately pay to SAPPHIRE all of SAPPHIRE's outstanding unpaid invoices and interest and, without prejudice to clause 16.4(g), in respect of any services for which no invoice has been submitted, SAPPHIRE may submit an invoice, which shall be payable immediately on receipt;
- (c) all rights and licences granted under the contract shall immediately terminate (including any right to access and use the Services and each SAPPHIRE Account and/or SAPPHIRE Timesheet Account (as the case may be));
- (d) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (e) SAPPHIRE may destroy or otherwise dispose of or otherwise put beyond use any of the Customer Data in its possession or control unless SAPPHIRE receives, no later than ten (10) days after the effective date of the termination of the contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data in CSV format. SAPPHIRE shall use reasonable commercial endeavours to deliver the back-up to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by SAPPHIRE in returning or disposing of Customer Data including, but not limited to, any manipulation of Customer Data and/or creation of subsets of such Customer Data as required by the Customer;
- (f) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced; and
- (g) without prejudice to any other rights or remedies of SAPPHIRE, in the event of termination other than in accordance with clause 16.1(a) or by the Customer in accordance with clause 16.2, the Customer shall pay a Termination Sum, being the higher of 50% of :
  - (i) the Subscription Fees which would have been paid for the remaining Subscription Term and which shall be calculated by using the highest Billing Period of Subscription Fees to date and multiplying this by the number of Billing Periods (or part thereof) remaining of the Initial Subscription Term or the current Renewal Period (as the case may be); and
  - (ii) the Platform and Support Services Fee which would have been paid for the remaining Subscription Term.

16.5 If any law, regulation or government or regulatory body requires SAPPHIRE to retain any documents, material or Customer Data that SAPPHIRE would otherwise be required to return or destroy, it will (so far as is lawfully possible) notify the Customer in writing of the retention requirements, giving details of the documents, materials and Customer Data it must retain and the legal basis for such retention and establishing a specific timeline for deletion or destruction once the retention requirement ends.

**17. Communication between us**

Save in relation to any notice to be served pursuant to the contract and to which clause 28 shall apply, the Customer may contact SAPPHIRE by e-mail sent to [admin@quartzbysapphire.com](mailto:admin@quartzbysapphire.com) or by prepaid post to SAPPHIRE at Bramhall House, 14 Ack Lane East, Bramhall, Stockport, SK7 2BY. SAPPHIRE will confirm receipt of this by contacting the Customer in writing, normally by e-mail. SAPPHIRE may change the address for notice from time to time and will either notify the Customer of any change (normally by e-mail) or by publishing updated details on the Website.

**18. Events outside our control**

SAPPHIRE shall have no liability to the Customer, an Affiliate or a Client under the contract if it is prevented from, hindered or delayed in or from performing its obligations under the contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of SAPPHIRE or any other party), failure of a utility service or transport or telecommunications network, unavailability of the internet network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

**19. Conflict**

If there is an inconsistency between:

- (a) any of the provisions in the main body of the contract and the Schedules, the provisions in the main body of the contract shall prevail; and
- (b)
  - (i) the Order Form;
  - (ii) a Statement of Work; and
  - (iii) these Terms,

a term contained in a document higher in the list shall have priority over the one contained in a document lower in the list.

**20. Waiver**

No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**21. Rights and remedies**

Except as expressly provided in the contract, the rights and remedies provided under the contract are in addition to, and not exclusive of, any rights or remedies provided by law.

**22. Severance**

- 22.1 If any provision (or part of a provision) of the contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

22.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**23. Further assurance**

The Customer shall (and shall procure that each Client shall) diligently and promptly following SAPPHIRE's reasonable request, do all such things (including an obligation to co-operate in good faith with SAPPHIRE and any third party which it nominates), perform all such acts and sign all such documents as SAPPHIRE considers to be necessary for the Customer and each Client to comply with the terms of the contract and any Third Party Terms or which is required for SAPPHIRE to comply with any lawful requirement of a regulatory authority or law enforcement agency, any court Order or the terms of any contract to which SAPPHIRE is a party and which is necessary for the provision of the Services.

**24. Entire agreement**

24.1 The contract and any documents referred to in it, constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

24.2 Each of the parties acknowledges and agrees that in entering into the contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the contract or not) relating to the subject matter of the contract, other than as expressly set out in the contract.

**25. Assignment**

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

25.2 SAPPHIRE may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the contract.

**26. No partnership or agency**

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

**27. Third party rights**

27.1 Subject to clause 27.2, the contract does not confer any rights on any person or party (other than the parties to the contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

27.2 Each Client and each third party supplier of SAPPHIRE (**Permitted Third Party**), shall have the right to enforce the terms of the contract against the Customer, provided that the consent of a Permitted Third Party shall not be required to amend the terms of the contract or to rescind the contract.

**28. Notices**

28.1 Any notice required to be given under the contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the contract (and where such notice is sent by the Customer, with a copy to the e-mail or postal address detailed in clause 17), or such other address as may have been notified by that party for such purposes.

28.2 A notice delivered by hand shall 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 shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

**29. Governing law**

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

**30. Jurisdiction**

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

### **Schedule 1**

The Subscription Fees are calculated in relation to each Billing Period by reference to the following User Subscriptions:

1. SAPPHIRE Pay and Bill

A User Subscription being each Active Contractor during a Billing Period.

## Schedule 2

### Service Level Agreement

#### 1. Support Requests

1.1 The Customer may make a Support Request for problems or issues with the Services in accordance with the Support Services Policy. SAPPHIRE will prioritise Support Requests based on its assessment of the severity level of the problem or issue reported being made.

1.2 Based on the severity level assigned to a Support Request, SAPPHIRE will use commercially reasonable endeavours to respond to and resolve a Support Requests in accordance with the times set out below:

Severity	Definition	Response Time	Resolution Times
1	A critical error or failure of the Services that prevents payrolls from being run and which: a) material impacts the operations of the Customer's business; or b) disables major functions of the Services from being performed.	1 hour	1 day
2	a) a critical error or failure of the Services for which a work-around exists; or b) a non-critical error or failure of the Services that materially impacts on the operations of the Customer's business.	2 hours	5 days
3	An error or failure of the Services that: a) does not significantly affect functionality; b) may disable only certain non-essential functions; or c) does not materially impact the Customer's business.	5 hours	10 days
4	Any isolated, minor or cosmetic errors.	2 days	As agreed between the parties.

1.3 When measuring compliance with these time periods:

- (a) response times run from when a Support Request is received by SAPPHIRE;

- (b) resolution times do include time during which SAPPHIRE is waiting from input from the Customer or waiting for the Customer to undertake requested actions; and
  - (c) response times and resolution times are measured on Business Days and during Normal Working Hours only.
- 1.4 Where SAPPHIRE is to provide a resolution for a Support Request, such resolution would include the provision by SAPPHIRE of a reasonable workaround which does not materially impact on the Customer's operations.
- 1.5 The response and resolution times set out above shall not apply where the Support Request relates to a problem or issue which is as a result of:
- (a) the Customer's breach of the contract;
  - (b) any third party software, applications or hardware;
  - (c) any matter which is excluded under the Support Services Policy; or
  - (d) any other cause which is outside of SAPPHIRE's reasonable control.

**2. Service Credits**

Where SAPPHIRE has failed to provide a resolution for a Support Request in accordance with the resolution times as set out in paragraph 1.2, the Customer may be entitled to service credits as follows:

Severity	Service Credit
1	<p>In relation to Severity 1 Support Request for which SAPPHIRE fails to provide a resolution in accordance with the required timescale above:</p> <p><u>for issues or problems which affect Clients other than Limited Company Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 50% of the Subscription Fees applicable to each such Client affected by the problem or issue which is payable in respect of the week of the Billing Period in which the problem or issue occurs</li> </ul> <p><u>for issues or problems which affect Limited Company Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 25% of the Subscription Fees applicable to each such Limited Company Client affected by the problem or issue which is payable in respect of Billing Period in which the problem or issue occurs</li> </ul>
2	<p>In relation to Severity 2 Support Request for which SAPPHIRE fails to provide a resolution in accordance with the required timescale above:</p> <p><u>for issues or problems which affect Clients other than Limited Company Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 25% of the Subscription Fees applicable to each such Client affected by the problem or issue which is payable in respect of the week in the Billing Period which the problem or issue occurs</li> </ul> <p><u>for issues or problems which affect Limited Company Clients:</u></p> <ul style="list-style-type: none"> <li>• An amount equal to 12.5% of the Subscription Fees applicable to each</li> </ul>

	Limited Company Client affected by the problem or issue which is payable in respect of the Billing Period in which the problem or issue occurs
3	Not applicable.
4	Not applicable.

- 2.1 The total service credits payable in respect of any Billing Period shall not exceed a maximum of 50% of the total Subscription Fees paid in respect of that Billing Period.
- 2.2 To be entitled to service credits, the Customer must notify SAPPHIRE of any claim for service credits, which will then be assessed by SAPPHIRE. Any claim for service credits must be made within thirty (30) days of the end of the Billing Period to which they relate.
- 2.3 For the avoidance of doubt, service credits will not be payable where the Support Request relates to a problem or issue which is as a result of those matters set out in paragraph 1.5.
- 2.4 Any service credits shall be shown as a deduction from the amount due from the Customer in the next invoice then due to be issued under the agreement. The Supplier shall not in any circumstances be obliged to pay any money or make any refund to the Customer.
- 2.5 The service credit mechanism above is the Customer's exclusive remedy for any failure of SAPPHIRE to provide the Services in accordance with the SLA as required under clause 4.1 or any failure to make the services available as required under clause 4.2.