



# aztech

Terms & Conditions

Backup Services Schedule Document

Public

## **BACKUP SERVICE AGREEMENT**

**BETWEEN**                **Aztech IT Solutions Ltd** at Libra House, Sunrise Parkway, Linford Wood Business Park, Milton Keynes MK14 6PH (“Supplier”)

**AND**                     The “Customer” as stated here or in the service order form (“Customer”)

### **BACKGROUND**

- A. The Supplier provides backup services and related additional services.
- B. The Supplier and the Customer have agreed that the Supplier will provide backup services to the Customer, in accordance with the terms and conditions of this agreement.

This Agreement includes:

- This page including the execution provisions;
- The Schedule – which includes Supplier and Customer information, pricing, term, order of precedence and other details;
- The Appendix to the Schedule – which includes service details;
- The terms and conditions; and
- The GDPR Attachment.

All capitalized words used in this Agreement have the meaning given to them in clause 22 of the terms and conditions.

### **Executed as an agreement**

The signed, or electronically signed service order form (also referred to as the final quote) shall execute this agreement.

## SCHEDULE

### 1. Supplier: Contact details

|                   |                                                                                    |
|-------------------|------------------------------------------------------------------------------------|
| Physical Address: | Libra House, Sunrise Parkway, Linford Wood Business Park<br>Milton Keynes MK14 6PH |
| Postal Address:   | As Above                                                                           |
| Email:            | <a href="mailto:info@aztechit.co.uk">info@aztechit.co.uk</a>                       |
| Attention:        | Commercial Director                                                                |

### 2. Customer: Contact details

|                   |                                                             |
|-------------------|-------------------------------------------------------------|
| Physical Address: | As per the service order form                               |
| Postal Address:   | As per the service order form                               |
| Email:            | As per the named contact on the approved service order form |
| Attention:        | As per the named contact on the approved service order form |

### 3. Key Contact Personnel

|          |                                                                                 |
|----------|---------------------------------------------------------------------------------|
| Supplier | Helpdesk – <a href="mailto:helpdesk@aztechit.co.uk">helpdesk@aztechit.co.uk</a> |
| Customer | As per the named contact on the approved service order form                     |

### 4. Backup Service

Refer to the Appendix (attached) for details and conditions.

## 5. Pricing and payment

|                                                                  |                                                                                                                                                                              |
|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Setup Work<br>(details in part 1 of Appendix)                    | Any setup costs will be shown in the final quote or service order form.                                                                                                      |
| Backup Service<br>(details in part 2 of Backup Service Appendix) | Backup service costs are detailed in the service order form or final quote                                                                                                   |
| Additional Services                                              | Should any additional services apply outside the agreed services, then Standard hourly rates apply at £125.00 per hour.                                                      |
| Payment                                                          | Monthly charges: Monthly in advance<br><br>Setup work and Additional Services: Monthly in arrears<br><br>Payment terms 30 days net of date of invoice                        |
| Price increases                                                  | The Supplier may increase pricing on six weeks' notice in writing to the Customer, with no more than one increase in 12 months and with any increase to be not more than 5%. |

## 6. Term

|                   |                                                                                                                                                      |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Commencement Date | Date of signing by both parties                                                                                                                      |
| Term              | This Agreement commences on the Commencement Date and ends when terminated by either party. Refer to clause 13 of the attached terms and conditions. |

## 7. Order of precedence

|                      |                                                                                                                                                                                                                                                                                                                                                           |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Order of precedence: | <p>If there is any inconsistency between the parts of this Agreement, the following order of precedence applies to the extent of that inconsistency (listed high to low priority):</p> <ul style="list-style-type: none"><li>(a) the GDPR Attachment;</li><li>(b) terms and conditions;</li><li>(c) the Appendix; and</li><li>(d) the Schedule.</li></ul> |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## 8. Supplier's insurance

|                                  |                                                                                               |
|----------------------------------|-----------------------------------------------------------------------------------------------|
| Professional indemnity insurance | Limit of Liability (all Claims in the annual aggregate including Defence Costs)<br>£2,000,000 |
| Public liability insurance       | Limit of indemnity £5,000,000                                                                 |

## APPENDIX BACKUP SERVICE

### 1. Setup Work

The supplier will set up and configure the backup service per the agreed service order form or scope of works.

### 2. Third Party Backup Product

The supplier uses third-party backup products to deliver its backup services. The third-party backup solution purchased will be detailed in the service order form. Below is a list of commonly used backup products by the supplier.

| Third Party Backup Product<br>(Product name) |
|----------------------------------------------|
| Datto BCDR                                   |
| Datto SAAS Protection                        |
| Microsoft Azure backup                       |
| N-Able Cloud Backup                          |
| Acronis                                      |
| Veeam                                        |

The Supplier will monitor backups for issues including software issues but takes no responsibility for the proper functioning of the Third Party Backup Product.

### 3. Data to be backed up

The supplier and client will agree on what data is to be backed up as part of this agreement. This information will be recorded in the "Data Backup Schedule"

### 4. Application of this Agreement

The Customer acknowledges that the Backup service provided by the Customer under this Agreement only applies for:

(a) the Third Party Backup Product specified in section 2 above; and

(b) the data specified in section 3 or the Data Backup Schedule

## 5. Backup Service

The Supplier provides the following Backup Service under this Agreement.

| Backup Service                                                                                         | Backup Service Description                                                                               |
|--------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| <b>Monitor backup</b>                                                                                  | 24/7 monitoring and alerting of failed and successful backups                                            |
| <b>Maintain backup</b>                                                                                 | Resolve any issues with backups, make any required changes to backup configuration and schedules         |
| <b>Check logs</b>                                                                                      | Review and check logs for any errors                                                                     |
| <b>Raise Support Incidents</b><br>(Response and subsequent work on Incidents is an Additional Service) | Raise and work on any support incidents related to backups and restores, including full system restores. |
| <b>Reporting</b>                                                                                       | Provide weekly backup status reports and live dashboard ( on request)                                    |

Out of scope: The following are out of scope for this Agreement (and will not be provided as an Additional Service):

- Workplace Recovery
- Loan hardware

## 6. Customer responsibilities

The customer will notify the supplier of any major changes within the IT environment and data usage so that backup services are not affected.

## 7. Additional Services

The following services are out of scope for the Backup service and where provided by the Supplier will be treated as an Additional Service, for which the Supplier will charge the Customer at the Supplier's standard hourly rates:

- (a) any services not expressly included as part of the Backup service;
- (b) response to Incidents and investigative, diagnosis and remedial work for an Incident;

The Customer acknowledges that:

- (c) data restoration is or may be complex and time-consuming and is dependent on factors which are outside of the control of the Supplier (including successful functioning of the Third Party Backup Product);
- (d) while the Supplier will use its best endeavors to successfully restore data where this is required, the Supplier gives no guarantee that data restoration will be successful or complete.

## 8. Support Incidents

An Incident will be raised by the Supplier in the following situations, and in any of these situations the Service Levels in section 9 apply once the Supplier becomes aware of the situation:

- (a) data discrepancy in the Backed Up Data;
- (b) Customer inability to access the Data;
- (c) ransomware attack;
- (D ) any other occurrence which threatens data integrity, availability or accessibility.

## 9. Service Levels (SLAs) for Additional Services

| Priority                       | Priority definition                        | Response time | Target remedy time |
|--------------------------------|--------------------------------------------|---------------|--------------------|
| <b>Priority 1<br/>Critical</b> | Critical – whole site or business affected | 15 Minutes    | 2 Hours            |
| <b>Priority 2<br/>Serious</b>  | VIP or Multiple users affected             | 30 Minutes    | 4 Hours            |
| <b>Priority 3<br/>Moderate</b> | Moderate Issue                             | 2 Hours       | 8 Hours            |
| <b>Priority 4<br/>Minor</b>    | Minor issues or can be scheduled           | 12 Hours      | 48 Hours           |

## 10. Service exclusions

Where any of these exclusions apply, the Service Levels do not apply.

- (a) Third-Party service outage or failure



## **11. Backup failures**

The Supplier is not responsible for backup failures, including without limitation where the failure is due to any of the following:

- (a) failure or improper functioning of the Third Party Backup Product;
- (b) any third party act, omission or circumstance, whether malicious or not (other than where the third party is a subcontractor engaged by the Supplier) or any unauthorized access to the Third Party Backup Product or to the Backed Up Data;
- (c) a Force Majeure Event.

## **12. Third party services**

The Customer acknowledges that the Supplier utilizes or may utilize the services of the Third Party Vendor (or associated third parties, which may include for example the distributor from which the Third Party Backup Product was procured) in the provision of the Backup Service and any Additional Services described in this Appendix. The Supplier will have no liability to the Customer whether direct, indirect or otherwise in respect of the acts or omissions of the Third Party Vendor or any such associated third party.

The Customer acknowledges and consents to the any such third parties having access to the Data and the Backed Up Data solely for the purposes of this Agreement.

# BACKUP AGREEMENT

## TERMS AND CONDITIONS

### 1 **Scope of Agreement**

- 1.1 The Supplier will carry out the Set up Work (if any) and provide the Backup Service and Additional Services to the Customer in accordance with this Agreement.

### 2 **Term**

- 2.1 This Agreement commences on the Commencement Date.
- 2.2 This Agreement remains effective until terminated by either party under clause 13.

### 3 **Setup**

- 3.1 The Supplier will undertake the Setup Work (if any) on the following basis:
- (a) the Customer must meet its obligations in relation to Setup Work as described in part 1 of the Appendix;
  - (b) the Customer acknowledges that the Setup Work has been determined based in part on information provided to the Supplier by the Customer. Where that information is incomplete or inaccurate, or where the Customer's requirements otherwise change before or during the course of the Setup Work, the Supplier will notify the Customer of any resulting changes to the Setup Work and may charge for the additional work at its standard hourly rates.

### 4 **Pricing and payment**

- 4.1 Part 5 of the Schedule specifies the basis of the Supplier's pricing for Setup Work (if any), the Backup Service and Additional Services and the Supplier will invoice the Customer accordingly. Where any work is undertaken on a time and materials basis, the Supplier's standard rates apply. All amounts specified in part 5 the Appendix are exclusive of any taxes unless expressly specified otherwise.
- 4.2 Unless otherwise specified, all invoices issued by the Supplier are due for payment by the Customer on 30 days net following the date of the invoice.
- 4.3 Subject to clause 4.4, the Customer will pay all invoices issued by the Supplier to the Customer under this Agreement in full, without setoff, counterclaim or deduction of any kind, on or before the due date.
- 4.4 If the Customer wishes to dispute an invoice, it must notify the Supplier in writing within 14 days of the date of the invoice and provide details of the dispute. The Customer may withhold payment of the disputed part of an invoice only and must pay that part (or any amount subsequently agreed or determined to be the correct amount owing) promptly on resolution of the dispute.

4.5 Without the Supplier waiving any other right or remedy it may have, if any amount due is not paid by the Customer by the due date, the Supplier may:

- (a) charge the Customer interest calculated at 1.5% on the balance of the amount due by the Customer from the due date until payment is received in full by the Supplier; and/or
- (b) charge the Customer all collection costs reasonably incurred by the Supplier in collection of the amount outstanding (including solicitor and/or collection agency fees); and/or
- (c) suspend delivery of the Backup Service until the outstanding amount is paid in full. The Supplier will give five Working Days' notice in writing of its intention to suspend delivery under this clause.

## 5 **Taxes**

5.1 In addition to the amounts due under clause 4, the Customer will pay the Supplier amounts equal to any applicable government taxes or duties however designated, based on this Agreement (or the services provided under it), paid or payable by the Supplier in respect of the foregoing, exclusive however of taxes based on the Supplier's income.

## 6 **Data**

6.1 Subject to clause 6.2, the Supplier will access the Data only in the course of providing the services to the Customer under this Agreement.

6.2 The Supplier will only access the Data and disclose the Data to law enforcement or government authorities to the extent required by law. If a request for Data is made by a law enforcement agency or government authority, the Supplier will redirect the request to the Customer or if redirection is not permitted or feasible in the available time frame and unless legally prohibited from doing so, the Supplier will notify the Customer of the request as soon as practically possible.

6.3 The Customer will, as and to the extent required by law, notify individual users that their data may be disclosed to law enforcement or other government authorities (if a request is made by law enforcement or other government authorities). It is the Customer's responsibility to obtain consent from individual users to the potential for disclosure under this clause.

6.4 Nothing in this Agreement transfers ownership of the Data to the Supplier.

## 7 **Customer's obligations**

### 7.1 The Customer will:

- (a) meet the Customer obligations described in the Appendix in a timely manner (and in accordance with any timeframes which the Customer has agreed to) and provide all assistance and including reasonably required by the Supplier;
- (b) provide the Supplier with such access to its systems as reasonably required by the Supplier.

## 8 **Personnel**

8.1 The Supplier's personnel involved in provision of the services under this Agreement will have the requisite skills and expertise for the purpose and will carry out their duties with due care and skill.

## 9 **Personal Data and Data Protection**

9.1 The Customer consents to the Processing of Personal Data by the Supplier for the purposes of this Agreement, in accordance with this Agreement including in particular the GDPR Attachment. Before providing Personal Data to the Supplier, Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable Data Protection Laws.

9.2 To the extent permitted by applicable law and subject to applicable contractual rights and obligations, including the rights and obligations in the GDPR Attachment, Personal Data collected by the Supplier under this Agreement may be transferred, stored and processed in the United Kingdom and/or any other country (or countries) in which the Supplier maintains facilities or any other country in which the Supplier's contractors or service providers (including for example Microsoft and other third party vendors) maintain facilities.

9.3 In the event of any Personal Data Breach, the Supplier will comply with its obligations, including notification obligations, (if any), under applicable Data Protection Laws.

## 10 **Confidential Information**

### 10.1 Each party agrees to:

- (a) hold in confidence all Confidential Information disclosed to it by the other party including, but without limitation, information which:
  - i. comes into its possession as a result of, or in the performance of this Agreement; or
  - ii. is confidential and clearly so identified; or
  - iii. involves business plans or financial and personnel affairs, and
- (b) ensure that all Confidential Information is:

- i. used only for the purposes of this Agreement; and
- ii. protected at all times from unauthorised access or use by, or disclosure to, any third party or misuse, damage or destruction by any person.

## 11 **Intellectual property**

- 11.1 The Supplier or its licensors (including third party service suppliers) own the Intellectual Property in the means, methods, processes and know-how that the Supplier uses to provide the Backup Services. Nothing in this Agreement operates to transfer ownership of any of the Supplier's (or its licensors' or third parties') Intellectual Property to the Customer.
- 11.2 The Customer confirms that it has and will maintain at its cost all requisite rights, licenses and authority to the Data and as may be required to engage the Supplier to provide services under this Agreement.

## 12 **Warranty by the Supplier**

- 12.1 The Supplier warrants that all services provided under this Agreement will be provided with due care and skill by people that have the requisite skills, expertise and competency.
- 12.2 With the exception of the warranty given under clause 12.1, all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

## 13 **Termination**

- 13.1 The customer will notify us of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Term, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Term; or
- 13.2 Either party may terminate this Agreement immediately (or with effect from any later date that it may nominate) by written notice to the other party if one or more Insolvency Events occurs in relation to that other party. For the purposes of this clause, 'Insolvency Event' means, in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):
  - (a) a receiver, manager or liquidator is appointed over the party's undertaking or assets or the party enters into any assignment, composition or arrangement with its creditors; or
  - (b) the party is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or suspends payment to its creditors.
- 13.3 Without limiting any other rights of termination that a party may have, either party may terminate this Agreement on written notice to the other party if the other party:
  - (a) commits a material breach of any of its obligations under this Agreement; and
  - (b) fails to remedy that breach within 30 days of prior written notice of such breach.

## 14 **Consequences of termination**

- 14.1 On termination of this Agreement by either party, the Customer will pay for the remainder of the minimum term of this Agreement, or if that minimum term has expired the Customer will pay up until the termination date (and will pay for all Setup Work and Additional Services provided to the date of termination). The Supplier will issue invoices to the Customer for all amounts specified in this clause 14.1 for which no invoice has yet been issued and all invoices will be due on the 20<sup>th</sup> of the month following the date of invoice. Invoices issued prior to the date of termination will remain due in accordance with the terms of the invoice.

## 15 **Liability**

- 15.1 The limitation of liability in this clause 15 does not apply to claims by the Customer for bodily injury or damage to real property or tangible personal property for which the Supplier is legally liable.
- 15.2 The Supplier's liability under this Agreement is limited to direct loss only, to the amount paid by the Customer in the 12 month period preceding the event giving rise to the claim.
- 15.3 In no event is the Supplier liable for any indirect loss or for any loss of profits, lost savings, lost revenue, loss of data, business interruption, incidental or special damages, or for any consequential loss.

## 16 **Dispute Resolution**

- 16.1 In the event of any dispute arising between the parties in relation to this Agreement, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 16.
- 16.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.
- 16.3 If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period as may be agreed upon in writing by the parties), either party may utilise any other legal remedies available to it in seeking to resolve the dispute.

## 17 **Non-Solicitation**

- 17.1 Neither party will, without the written consent of the other party, solicit, employ, or otherwise engage the services of, the other party's personnel (including employees and contractors). This clause will apply during the term of this Agreement and for six months after termination of this Agreement.

17.2 A party may as a condition of granting its consent under clause 17.1 above, require the other party to pay to it a fee of 15% of the person's gross annual remuneration to cover the cost of replacing the employee or contractor.

## 18 **Notices**

18.1 Any notice or other communication in connection with this Agreement must be:

- (a) marked for the attention of the person specified in Parts 1 and 2 of the Schedule or any replacement person notified in writing by the relevant party; and
- (b) left at the address or sent by prepaid post or email to the address of the relevant party specified in Parts 1 and 2 of the Schedule or any replacement address notified by that party.

18.2 Notices or other communications are deemed received:

- (a) if delivered by hand, on delivery;
- (b) if delivered by post:
  - i. on the third Working Day following posting if sent and received locally (not internationally); and
  - ii. on the tenth day following posting if posted internationally;
- (c) if sent by email, on sending the email provided that no email is successfully sent if the sender receives any type of delivery notification failure.

## 19 **Force majeure**

19.1 Either party may suspend its obligations to perform under this Agreement if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.

19.2 Where a party's obligations have been suspended pursuant to clause 19.1 for a period of 30 days or more, the other party may immediately terminate this Agreement by giving notice in writing to the other party.

## 20 **General**

20.1 Assignment. Neither the Customer nor the Supplier may assign its rights under this Agreement without the prior written consent of the other party.

20.2 Contractors. The Supplier may perform its obligations under this Agreement by the use of the Supplier-selected independent contractors.

20.3 Survival. All clauses of this Agreement, which by their nature survive the termination of this Agreement will do so.

20.4 Entire agreement. This Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

- 20.5 Further assurances. The parties must each do all such further acts (and sign any documents), as may be necessary or desirable for effecting the transactions contemplated by this Agreement.
- 20.6 Amendments. Except as specifically provided, no amendment to this Agreement will be effective unless it is in writing and signed by both parties.
- 20.7 Waiver. No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it. A waiver on one occasion shall not be construed as a waiver of any right on any future occasion.
- 20.8 Partial invalidity. If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law. To the extent any provision cannot be enforced in accordance with the stated intentions of the parties, such terms and conditions shall be deemed not to be a part of this Agreement.

## 21 **Governing Law**

- 21.1 This Agreement is governed by the laws of England and Wales. The parties hereby submit to the non-exclusive jurisdiction of the courts of the United Kingdom.

## 22 **Interpretation and definitions**

- 22.1 In this Agreement, the following terms will, unless the context requires otherwise, have the following meanings:

**“Additional Services”** means the services described in section 7 of the Appendix;

**“Agreement”** means this Backup Service Agreement and includes the Schedule, the Appendix, these terms and conditions and the GDPR Attachment;

**“Appendix”** means the appendix to the Schedule;

**“Backup Copies”** means the backup copies of the Data, created through use of the Third Party Backup Product;

**“Backup Service”** means backup service supplied by the Supplier as described in the section 5 of the Appendix, and excludes the Third Party Backup Product and excludes Additional Services;

**“Commencement Date”** means the date specified in part 6 of the Schedule;

**“Confidential Information”** means any information disclosed in confidence to one party by the other party, whether of a business, financial, technical or non-technical nature or otherwise and whether existing in hard copy form, electronically or otherwise but does not include any information which is:

- (a) on receipt by the recipient party, in the public domain or which subsequently enters the public domain without any breach of this Agreement;



- (b) on receipt by the recipient party, already known by that party (otherwise than as a result of disclosure by the other party);
- (c) at any time after the date of receipt by the recipient party, received in good faith by the recipient party from a third party;
- (d) required by law to be disclosed by the recipient party;

**“Data”** means the Customer’s data identified in section 3 of the Appendix;

**“Data Protection Laws”** means the GDPR as incorporated into UK law by the UK Data Protection Act 2018, and the UK Data Protection Act 2018 itself, and includes any statutory modification or re-enactment of such laws for the time being in force;

**“Force Majeure Event”** means any war, riot, third party strike, pandemic, civil emergency, natural disaster or other circumstance of a similar nature, or any telecommunications or internet failure, or any other event that is outside of the control of the affected party;

**“GDPR”** means the EU General Data Protection Regulation 2016/679;

**“Incident”** means any of the situations in section 8 of the Appendix;

**“Intellectual Property”** means copyright, patents, designs, trademarks, trade names, goodwill rights, rights in designs, moral rights, database rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property, in all cases whether or not registered or able to be registered in any country, and including the right to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world from time to time;

**“Personal Data”** means any information relating to an identified or identifiable natural person, as defined in the Data Protection Laws;

**“Personal Data Breach”** has the meaning given to that term in the Data Protection Laws (and includes unauthorised access to, unauthorised disclosure of, or loss of, Personal Data), in respect of Personal Data that is Processed by the Supplier under this Agreement);

**“Processing”** has the meaning given to that term in the Data Protection Laws, in respect of any operation which is performed on Personal Data by the Supplier (whether or not by automated means, and includes but is not limited to collection, recording or storage of the Personal Data), in respect of and ‘Process’ and ‘Processed’ has/have a corresponding meaning;

**“Schedule”** means the schedule that begins after the execution provisions of this Agreement;

**“Service Levels”** (where applicable) means the service levels in the Appendix;

**“Setup Work”** (where applicable) means the setup work described in part 1 of the Appendix;

**“Third Party Backup Product”** means the third party backup product(s) identified in the Appendix, which is/are supplied under a separate agreement between the parties or otherwise procured by the Customer;

**“Third Party Vendor”** means the vendor(s) of the Third Party Backup Product(s);

**“Working Day”** means a day other than a Saturday, Sunday or public holiday in the United Kingdom.

## 22.2 **Interpretation**

- (a) In this Agreement, reference to the plural includes reference to the singular, and vice versa.

Headings inserted in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

## GDPR ATTACHMENT

Under this Agreement, the Customer engages the Supplier to provide the Services and in providing the Services, the Supplier will or may be required to Process Personal Data on behalf of the Customer. To the extent of that Processing of Personal Data and for the purposes of this Agreement, the Customer is a 'Controller' and the Supplier is a 'Processor' for the purposes of the GDPR. As such, Article 28 of the GDPR requires that the details in this attachment are included in the contract between the Customer and the Supplier.

The parties must set out the subject matter and duration of the Processing, the nature and purpose of the Processing, the type of Personal Data and categories of data subjects – see appendix 1 to this attachment. If the Supplier determines the purposes and means of Processing, the Supplier is considered a 'Controller' in respect of that Processing in which case the Supplier needs to consider and address the different and additional provisions of the GDPR that apply.

The terms used in this attachment have the meanings given to them in the main definition section of this Agreement or in clause 13 of this attachment, or in the GDPR if not defined in this Agreement.

### **1 Processing of Personal Data**

#### **1.1 The Supplier will:**

- (a) Instructions from Customer: in providing Services under this Agreement, Process Personal Data only on the Customer's documented instructions (as provided in clause 2 and in appendix 1 to this attachment or otherwise in writing) unless required to do so by the Data Protection Laws in which case the Supplier will inform the Customer of that legal requirement before Processing unless the Supplier is prohibited from informing the Customer by that law;
- (b) Confidentiality: ensure that the Supplier's personnel who are authorised to Process the Personal Data have obligations of confidentiality to the Supplier (including as required in clause 3 below) in respect of the Personal Data or are under an appropriate statutory obligation of confidentiality;
- (c) Security: comply with the security obligations in clause 4 below;
- (d) Subprocessors: comply with the provisions relating to Subprocessors in clause 5 below;
- (e) Data subjects' rights: provide assistance to the Customer with responding to data subjects' rights in accordance with clause 6 below;
- (f) Assist Customer: comply with its obligations to assist the Customer in relation to security of Personal Data and data protection impact assessments and prior consultation in accordance with clause 7 below;
- (g) Deleting and retuning data: after the provision of Services related to Processing of Personal Data has ended, at the choice of the Customer either delete or return to the Customer all of that Personal Data and delete existing copies unless the Data Protection Laws require storage of Personal Data in accordance with clause 8 below; and
- (h) Compliance and audits: make available to the Customer all information necessary to demonstrate compliance with Article 28 of the GDPR and allow for and contribute to audits

including inspections conducted by the Customer or another auditor mandated from time to time, in accordance with clause 9 below. The Supplier will immediately inform the Customer if, in its opinion, an instruction received from the Customer under this clause 1.1(h), infringes the Data Protection Laws.

## **2 Instructions from Customer**

2.1 The Customer instructs the Supplier (and authorises the Supplier to instruct each Subprocessor) to:

- (a) Process Personal Data; and
- (b) in particular, transfer Personal Data to any country or territory,

as reasonably necessary for the provision of the Services and consistent with and in compliance with this Agreement.

2.2 The Customer warrants and represents that it is and will at all relevant times remain duly and effectively authorised to give the instruction set out in clause 2.1 on behalf of the Customer.

## **3 Confidentiality**

3.1 The Supplier will take reasonable steps to ensure the reliability of its employees, agents or contractors who may have access to Personal Data, ensuring in each case that access is limited to those individuals who need to know or need to access the relevant Personal Data, as necessary for the purposes of this Agreement, and to comply with applicable laws in the context of that individual's duties to the Supplier, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

## **4 Security**

4.1 Subject to clause 4.2 below, the Supplier will implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including amongst other things as appropriate:

- (a) the pseudonymisation and encryption of Personal Data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;
- (d) a process for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing.

4.2 In assessing the appropriate level of security for clause 4.1 above, the Supplier will take account in particular of the risks of a Personal Data Breach that are presented by the Processing to be undertaken under this Agreement.

4.3 The Supplier will in relation to Personal Data:

- (a) implement and maintain appropriate information security to protect Personal Data against:
  - i. a Personal Data Breach;
  - ii. all other unauthorized or unlawful forms of Processing; and
  - iii. any breach of the Supplier's information security obligations in this attachment. The Supplier will (and will ensure that its Sub-processors) provide full cooperation and assistance to the Customer in ensuring that the individuals' rights under the Data Protection Laws are timely and appropriately addressed for the fulfilment of the Customer's obligation to respond without undue delay to requests by such individuals as required by Data Privacy Laws, including the rights of subject access, rectification, erasure, and portability, and the right to restrict or object to certain Processing;
- (b) take reasonable steps to inform its staff, and any other person acting under its supervision, of the responsibilities of any Data Privacy Laws due to the incidental access to Personal Data, and ensure the reliability of its staff and any other person acting under its supervision who may come into contact with, or otherwise have access to and Process, such Personal Data.

## **5 Subprocessors**

- 5.1 The Customer authorises the Supplier to appoint Subprocessors (and permits each Subprocessor appointed in accordance with this clause 5 to appoint Subprocessors) in accordance with this clause 5 and any restrictions in this Agreement.
- 5.2 The Supplier will give the Customer prior written notice of the appointment of any new Subprocessor, including full details of the Processing to be undertaken by the Subprocessor. If, within two weeks of receipt of that notice, the Customer notifies the Supplier in writing of any objections (on reasonable grounds) to the proposed appointment, the Supplier will not appoint (nor disclose any Personal Data to) the proposed Subprocessor unless and until it obtains the prior written consent of the Customer.
- 5.3 With respect to each Subprocessor, the Supplier will:
  - (a) enter into an agreement with the Subprocessor which includes the same data protection obligations as set out in this attachment (and Appendix 1) and in particular includes sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR. If the Subprocessor fails to fulfil its data protection obligations, the Supplier will remain fully liable to the Customer for the performance of that Subprocessor's obligations;
  - (b) if the Processing by the Subprocessor will involve a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between the Supplier and the Subprocessor; and
  - (c) provide to the Customer for review, copies of the Supplier's agreements with Subprocessors (confidential commercial information that is not relevant to the

requirements of this attachment may be blacked out) as the Customer may request from time to time.

- 5.3 Appendix 1 to this attachment sets out certain information regarding the Supplier's Processing of Personal Data, as required by article 28(3) of the GDPR. The Customer may make reasonable amendments to Appendix 1 by written notice to the Supplier from time to time as the Customer reasonably considers necessary to meet those requirements.

## **6 Data Subjects' Rights**

- 6.1 Taking into account the nature of the Processing, the Supplier will, by implementing appropriate technical and organisational measures to the extent described in clause 4, assist the Customer to respond to requests to exercise Data Subject rights under the Data Protection Laws.

- 6.2 The Supplier will:

- (a) promptly notify the Customer if the Supplier or any Subprocessor receives a request from a Data Subject under any Data Protection Law in respect of Personal Data; and
- (b) ensure that the Supplier or relevant Subprocessor does not respond to that request except on the documented instructions of the Customer or as required by Applicable Laws to which they are subject, in which case the Supplier will to the extent permitted by Applicable Laws inform the Customer of that legal requirement before the Supplier or relevant Subprocessor responds to the request.

## **7 Assist Customer**

- 7.1 Assist Customer with Security of Processing:

- (a) The Supplier will assist the Customer in respect of the Customer's obligations to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, by complying with the Supplier's obligations under clause 4 of this attachment.

- 7.2 Assist Customer with notifications of Personal Data Breach

- (a) The Supplier will notify the Customer without undue delay if the Supplier or any Subprocessor becomes aware of a Personal Data Breach, providing the Customer with sufficient information to allow the Customer to meet any obligations to report the Personal Data Breach to the relevant Supervisory Authority under the Data Protection Laws (noting that the Customer is required, where feasible, to notify applicable Personal Data breaches to the relevant Supervisory Authority within 72 hours after having become aware of the breach).
- (b) The Supplier will co-operate with the Customer and take such reasonable commercial steps as are directed by the Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

- 7.3 Assist Customer with communication of Personal Data breach to Data Subject

- (a) Where a Personal Data Breach is likely to result in a high risk to the rights and freedoms of natural persons:
  - i. such that the Customer is required to communicate the Personal Data Breach to the Data Subject (including where, despite the conditions referenced in clause 7.3(a)(ii) below being met, the Supervisory Authority has required the Customer to communicate the Personal Data Breach to the Data Subject), the Supplier will assist the Customer in doing so by providing all relevant information as may be reasonably required by the Customer;
  - ii. but despite that high risk, the Customer is not required to communicate the Personal Data Breach to the Data Subject due to certain conditions being met (such as that the Personal Data is encrypted and so unintelligible to any person not authorised to access it), the Supplier will assist the Customer by providing all relevant information as may be reasonably required by the Customer.

#### 7.4 Assist Customer with Data Protection Impact Assessments

- (a) The Supplier will provide reasonable assistance to the Customer with any data protection impact assessments which the Customer reasonably considers to be required of the Customer by Article 35 of the GDPR or equivalent provisions of related Data Protection Laws. The Supplier's obligations under this clause 7.4(a) are solely in relation to Processing of Personal Data by the Supplier and taking into account the nature of the Processing and information available to the Supplier.

#### 7.5 Assist Customer with Prior Consultation with Supervisory Authority

- (a) The Supplier will provide reasonable assistance to the Customer with prior consultations with Supervising Authorities or other competent data privacy authorities, which the Customer reasonably considers to be required of the Customer by Article 36 of the GDPR or equivalent provisions of related Data Protection Laws. The Supplier's obligations under this clause 7.5(a) are solely in relation to Processing of Personal Data by the Supplier and taking into account the nature of the Processing and information available to the Supplier.

### 8 Deletion or return of Personal Data

8.1 Subject to clauses 8.2 and 8.3, the Supplier will, within two of the date of expiration or termination of Services involving the Processing of Personal Data (the "End of Processing Date"), delete and procure the deletion of all copies of the Personal Data.

8.2 Subject to clause 8.3, the Customer may in its absolute discretion by written notice to the Supplier within two weeks of the End of Processing Date require the Supplier to:

- (a) return a complete copy of all Personal Data to the Customer by secure file transfer in such format as is reasonably notified by the Customer to the Supplier; and

- (b) delete and procure the deletion of all other copies of Personal Data Processed by the Supplier. The Supplier will comply with any such written request within [two weeks] of the End of Processing Date.
- 8.3 The Supplier may retain Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and always provided that the Supplier will:
  - (a) ensure the confidentiality of all such Personal Data;
  - (b) ensure that such Personal Data is only processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.
- 8.4 The Supplier will provide written certification to the Customer that it has fully complied with this clause 8 within two weeks following the End of Processing Date.

## **9 Audit rights**

- 9.1 Subject to clauses 9.2 to 9.4, the Supplier will make available to the Customer on request all information necessary to demonstrate compliance with this attachment, and will allow for and contribute to audits, including inspections, by the Customer or an auditor mandated by the Customer in relation to the Processing of Personal Data by the Supplier.
- 9.2 Information and audit rights of the Customer only arise under clause 9.1 to the extent that this Agreement does not otherwise give them information and audit rights meeting the relevant requirements of Data Protection Laws (including, where applicable, article 28(3)(h) of the GDPR).
- 9.3 The Supplier may, on reasonable grounds, object to the proposed auditor in which case the Customer will propose an alternate auditor.
  - (a) The Customer will give the Supplier reasonable notice of any audit or inspection to be conducted under clause 9.1 and will make (and ensure that its auditor makes) reasonable endeavours to avoid causing any damage, injury or disruption to the Supplier's premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. The Supplier need not give access to its premises for the purposes of such an audit or inspection for the purposes of more than one audit or inspection in any calendar year, except for any additional audits or inspections which:
    - i. the Customer reasonably considers necessary because of genuine concerns as to the Supplier's compliance with this attachment; or
    - ii. the Customer is required or requested to carry out by Data Protection Law, a Supervisory Authority or any similar regulatory authority responsible for the enforcement of Data Protection Laws in any country or territory,where the Customer has identified its concerns or the relevant requirement or request in its notice to the Supplier of the audit or inspection.



## **10 Restricted Transfers**

- 10.1 The Customer acknowledges that in providing Personal Information to the Supplier under this Agreement, there is no Restricted Transfer given that the Supplier is in the United Kingdom.
- 10.1 Subject to clause 10.3, where the Services involve a 'Restricted Transfer', the Customer (as "data exporter") and the Supplier (as "data importer") each agrees to the Standard Contractual Clauses in respect of that Restricted Transfer.
- 10.2 The Standard Contractual Clauses will come into effect under clause 10.1 on the later of:
- (a) the data exporter becoming a party to them;
  - (b) the data importer becoming a party to them; and
  - (c) commencement of the relevant Restricted Transfer.
- 10.3 There is no requirement for the Supplier and Customer to agree to the Standard Contractual Clauses (or to include the Standard Contractual Clauses in this Agreement) where the transfer of Personal Data is to a country within the EEA or to an Approved Jurisdiction.

## **11 Order of precedence**

- 11.1 Nothing in this attachment reduces the Supplier's obligations under this Agreement in relation to the protection of Personal Data or permits the Supplier to Process (or permit the Processing of) Personal Data in a manner which is prohibited by this Agreement. In the event of any conflict or inconsistency between this attachment and the Standard Contractual Clauses, the Standard Contractual Clauses will prevail.
- 11.2 Subject to clause 11.1, in the event of inconsistencies between the provisions of this attachment and the other parts of this Agreement, the provisions of this attachment will prevail.

## **12 Changes in Data Protection Laws**

- 12.1 The Customer may by at least 30 calendar days' written notice to the Supplier:
- (a) vary the Standard Contractual Clauses (if applicable), as they apply to Restricted Transfers which are subject to non-UK data protection laws, as required as a result of any change in, or decision of a competent authority under, that data protection law, to allow those Restricted Transfers to be made (or continue to be made) without breach of that data protection law; and
  - (b) propose any other variations to this attachment which the Customer reasonably considers to be necessary to address the requirements of any data protection law.

12.2 If the Customer gives notice under clause 12.1(a):

- (a) the Supplier will promptly co-operate (and require affected Subprocessors to promptly co-operate) to ensure that equivalent variations are made to the agreements made under clause 5.3; and
- (b) the Customer will not unreasonably withhold or delay agreement to any consequential variations to this attachment proposed by the Supplier to protect the Supplier against additional risks associated with the variations made under this clause 12.2.

12.3 If the Customer gives notice under clause 12.1(b), the parties will promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in the Customer's notice as soon as is reasonably practicable.

### **13 Definitions**

In this attachment:

"Contracted Processor" means the Supplier or a Subprocessor;

"Data Subject" means an identified or identifiable natural person, or any updated definition of this term from time to time in the GDPR;

"EEA" means the European Economic Area;

"Information Security Obligations" means commercially reasonable and appropriate physical, technical and organisational security measures (determined with regard to risks associated with the Processing of Personal Data as part of the Services), including the measures set out in this Agreement and in particular in the Standard Contractual Clauses (where applicable).

"Restricted Transfer" means transferring Personal Data outside of the United Kingdom, whether this is:

- (a) a transfer of Personal Data from the Customer to the Supplier or to a Subprocessor; or
- (b) an onward transfer of Personal Data from one Contracted Processor to another Contracted Processor, or between two establishments of a Contracted Processor,

in each case, where such transfer means would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws), in the absence of the Standard Contractual Clauses;

"Services" means, for the purposes of this GDPR Attachment, the Backup Service and any related services supplied to or carried out by or on behalf of the Supplier for the Customer under this Agreement;

"Subprocessor" means any person (including any third party, but excluding an employee of the Supplier or any of its sub-contractors) appointed by or on behalf of the Supplier to Process Personal Data on behalf of the Customer in connection with this Agreement;

“Standard Contractual Clauses” means the standard contractual clauses issued by the European Commission (EU controller to non-EU or EEA processor), varied as permitted for the UK context, which, if applicable, are in Appendix 2 to this attachment (and if not applicable, there is no Appendix 2);

The term "Supervisory Authority" has the meaning given to that term in the GDPR.