

- 1.1.6** “**HA Proprietors**”² means all persons who own the Intellectual Property Rights in the Hosted Applications or who have licence rights in the Hosted Applications or any part or parts thereof and which licence rights are superior to the licence rights of Provider.
- 1.1.7** “**Hosted Applications**”³ means the software programs or components thereof used by Provider to provide the Services which are specified as the Hosted Applications in Schedule 1 as the same may be modified, added to or replaced during the Term.
- 1.1.8** “**Hosted Application Hours**” means the hours during which the Services are to be provided as set out in Schedule 1. References to "hour(s)" and "minute(s)" in this Agreement will, unless otherwise indicated, be taken only to refer to the elapse of time during Hosted Application Hours.
- 1.1.9** “**Initial Period**” means the period of 36 months commencing on the Commencement Date.
- 1.1.10** “**Intellectual Property Rights**” means all copyrights, patents, database rights, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world and for the full term thereof including all rights to renew the same.
- 1.1.11** “**Month**” means a calendar month and “monthly” shall be construed accordingly.
- 1.1.12** “**Outage**” means an instance of Downtime.
- 1.1.13** “**Service Interruption**” means a period during Hosted Application Hours during which there is partial loss of the Services.
- 1.1.14** “**Service Levels**” means the levels of performance to which the ASP and the Support Services are to be provided to the Customer by Provider as set out in Schedule 2.⁴

2 this definition and all references thereto may be irrelevant if the applications are provided by the Customer and in that case one would warrant that Provider may access and use such software for purposes hereof

3 see footnote above

4 If there are not to be any service levels, references to these can be deleted throughout

1.1.15 “**Services**” means the provision of the services, details of which are set out in Schedule 1.

1.1.16 “**System**” means the Hosted Applications and the Provider hardware as the same operate together in the provision of the Services.

1.1.17 “**System Management Regulations**” means regulations introduced by Provider from time to time for the better management of the Services and which may include (but are not limited to):

defining minimum specifications for equipment used by the Customer to interface with the Services (including, but not limited to, routers, firewalls and PC’s);

regulations to ensure that the network through which the Services are provided are not overloaded and that the security and integrity of the network is maintained and including regulations which arise from the need to comply with regulations of any data centre facility engaged by Provider in connection with the Services; and

regulations to ensure that any database or other applications which form part of the Services are used to the best effect and within their capacities.

1.1.18 “**Term**” means the effective term of this Agreement.

1.1.19 “**Tolerances**” means instances of diminution of or interruption to the Service Levels as set out in Schedule 2 and which are to be disregarded from the point of view of establishing whether Provider has fallen below those performance levels or breached any provision of this Agreement.

1.1.20 “**User**” [means an individual employee or contractor working for the Customer whose emails are scanned using the Services]⁵.

2. PROVISION OF SERVICES AND LICENCES

2.1.1 Provider agrees with effect from the Commencement Date in consideration of the payment of the ASP Fee by the Customer to supply the Services on a non-exclusive basis upon the terms and conditions of this Agreement.

2.1.2 The HA Proprietors⁶ impose certain licence terms and conditions in relation to the use of the Hosted Applications and to the extent that the same are relevant to the

5 Set out in Schedule 1 how the charging is calculated per User i.e. whether the User must be a named individual or just whether the ASP Fee is calculated on a number of Users which Provider can measure and may be increased by the Customer and specify whether such increases or decreases must be notified in advance to Provider or can just be implemented by the Customer

Customer the same are set out in Schedule 4. The Customer agrees with Provider, and for the benefit of the relevant HA Proprietor, to comply with those terms and conditions.

2.1.3 The Customer acknowledges that any HA Proprietor or Provider may at any time, and without notice, incorporate licence management software into the Hosted Applications for the purposes of ensuring that licence rights are not exceeded.

6 If the software being used is proprietary to Provider, all references to HA Proprietors are irrelevant and can be deleted. If the applications are already licensed to the customer then this clause is unnecessary.

- 3. DURATION**
- 4. ASP FEE**
- 5. SERVICE LEVELS**
- 6. OUTAGES, SERVICE INTERRUPTIONS AND CHANGES TO SERVICES**
- 7. WARRANTIES AND INDEMNITIES**
- 8. CUSTOMER OBLIGATIONS AND WARRANTIES.**
- 9. PROVIDER PROVIDED EQUIPMENT**
- 10. LIMITATION OF LIABILITY**
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 12. TERMINATION**
- 13. CONFIDENTIALITY**
- 14. FORCE MAJEURE**
- 15. WAIVER**
- 16. NOTICES**
- 17. PUBLICITY**
- 18. INVALIDITY AND SEVERABILITY**
- 19. ENTIRE AGREEMENT**
- 20. SUCCESSORS**
- 21. ASSIGNMENT**
- 22. SUB-CONTRACTING**
- 23. DISPUTES**
- 24. VAT**
- 25. LAW**